

Wednesday, October 28.

FIRST DIVISION.

[Lord Stormonth-Darling,  
Ordinary.

PHILLIPS AND OTHERS (SANGSTER'S TRUSTEES) v. THE GENERAL ACCIDENT ASSURANCE CORPORATION, LIMITED.

*Insurance — Accident Insurance — Conditions of Policy — “Wilfully, wantonly, or negligently exposing himself to any unnecessary danger.”*

A policy of insurance against accidental death contained the express condition “that the assured shall use all due diligence for his personal safety and protection, and” the policy “does not extend to cover death or injury . . . while travelling by rail in any other than a passenger carriage, or whilst acting in violation of the bye-laws, rules, or regulations of a railway or tramway company, or riding horse or cycle races or steeplechases, or otherwise wilfully, wantonly, or negligently exposing himself to any unnecessary danger.”

The insured, who was of strong constitution, a good swimmer, and accustomed to taking baths in cold water, was drowned while bathing in deep water from a boat on a cold and stormy evening in April.

*Held (aff.)* judgment of Lord Stormonth-Darling) that the case fell out with the condition of the policy, on the ground that the risks attending the act of the insured were not such as he was bound to anticipate.

Mrs Margaret Sangster or Phillips and others, testamentary trustees of the late Captain William Sangster, marine superintendent, Dundee, raised an action against The General Accident Assurance Corporation, Limited, for payment of £1000 in respect of a policy of insurance effected by the said William Sangster with that company.

Captain Sangster, who was forty-four years of age, was drowned in Loch Earn on the evening of 30th April 1895, in the following circumstances:—Finding the duties of his situation irksome, he had resigned it, and proceeded to Crieff on 29th April for a holiday. On the following day he breakfasted and lunched at Crieff, and in the afternoon went to Comrie and St Fillans, at each of which places he had a glass of wine and a biscuit, and spoke cheerfully and pleasantly to the persons who served him. He hired a boat at St Fillans, and was last seen rowing on the loch between eight and nine in the evening, which was cold and stormy. Next day the boat, with his clothes in it, was found aground at another part of the loch. The body was never recovered. It was

proved that the deceased was a man of strong constitution, of high character, and of absolute solvency; that he had been in the habit of taking baths in extremely cold water; and that his doctor had advised him to use cold water as a means of recovering tone. He was an expert swimmer, and accustomed to the management of boats.

The deceased was insured for £1000 with The General Accident Assurance Corporation, Limited, under a policy which bound the company to the payment of that sum “if . . . the assured shall sustain any personal injury caused by accident within the meaning of this policy and the conditions hereto.”

Condition 4 of the policy was in the following terms—“4. It is an express condition of this policy that the assured shall use all due diligence for his personal safety and protection, and it does not extend to cover death or injury by suicide or attempted suicide, whether criminal or not, or caused by or resulting from intoxication or insanity, or by duelling, fighting, or any breach of the law on the part of the assured, or by war or invasion, foreign enemy, civil commotion, popular riot, or any military or usurped power, or while travelling by rail in any other than a passenger carriage, or whilst acting in violation of the bye-laws, rules, or regulations of a railway or tramway company, or riding horse or cycle races or steeplechases, or otherwise wilfully, wantonly, or negligently exposing himself to any unnecessary danger.”

In their defences the company made certain averments tending to show that the deceased had committed suicide, and founded one of their pleas-in-law thereon.

The defenders further pleaded—“(3) *Esto* that the assured was accidentally drowned while bathing, the policy is void, and the defenders should be assoilzied, in respect that the assured failed to use due diligence for his personal safety and protection; *et separatim*, that he wilfully, wantonly, or negligently exposed himself to unnecessary danger.”

A proof having been led, the Lord Ordinary (STORMONTH DARLING) on 26th June 1896 granted decree against the defenders.

*Opinion.*—[After examining the evidence and expressing the opinion that Captain Sangster died by accident and not by suicide, his Lordship proceeded]—“But it is said by the defenders that if the act was not suicide, it was, at all events, so rash as to come within the clause in the policy which declares that it shall not extend to cover death or injury in consequence of the assured ‘wilfully, wantonly, or negligently exposing himself to any unnecessary danger.’

“Now, this clause comes after a careful enumeration of specific things which the policy is not to cover, some of these being quite arbitrary and not specially dangerous, such as travelling by rail in any other than a passenger carriage. Nobody doubts the company’s right to exclude these specific

things, because the assured has notice of them and consents to their exclusion. But a general clause of exclusion is not to be read in a sense inconsistent with the main purpose of the policy, which is to insure against accident. If this clause were read literally it would exclude the great majority of accidents. No man travels by land or sea without wilfully exposing himself to danger, and if he travels for pleasure, and not because he must, the danger may be said to be unnecessary. All such clauses are to be read, in case of doubt, most strongly against the party who puts them forward, viz., the company. I do not say that they are not to receive a fair interpretation, but the interpretation must be such as the company might reasonably expect the assured to put upon them when he accepts the policy.

“Now, such a person accepting a policy with such a clause in it cannot, I think be expected to understand it as meaning that in case of his death by accident his representatives are not to recover if it can be shown that he has conduced to the fatal result by doing something imprudent. To have such a consequence his act must be so grossly imprudent as to infer utter recklessness of his own safety. I cannot affirm that Captain Sangster's conduct in entering the water when he did came up to that. The event showed that it was an imprudent thing to do, because he was drowned, but I do not think he was bound to anticipate that as the most likely result. Cramp is a danger which attends all bathing in deep water, but it would be absurd to say on that account that all bathing in deep water is grossly imprudent. The case of a man crossing a railway line in broad daylight and not looking out for an approaching train, which was the *species facti* in *Cornish v. The Accident Insurance Company*, 23 Q.B.D. 453, is clearly distinguishable, and I think the present case more nearly resembles the two American cases of *Schneider* and *Burkhard* which were cited in argument.”

The defenders reclaimed, and argued on the condition in the policy—The deceased here had wilfully, wantonly, or negligently exposed himself to unnecessary danger. Nothing could be more imprudent than for a man heated with rowing to bathe in a loch on a cold and windy night in April. The danger of so doing was obvious. The case accordingly fell within the condition in the policy, and was on all-fours with *Cornish v. Accident Insurance Company*, 23 Q.B.D. 453, while it was distinguishable from *Schneider v. Provident Life Insurance Company*, 1 Amer. Rep. 157, and *Burkhard v. Travellers' Insurance Company*, 43 Amer. Rep. 205.

Counsel for the pursuers were not called upon.

LORD PRESIDENT—[After stating that the facts proved did not suggest even a suspicion that the deceased met his death by suicide]—Another question is raised by this reclaiming-note. It is said that if we adopt

the alternative view that the deceased met his death by accident, he exposed himself to “unnecessary danger” in the sense of the policy, and that that excludes the claim of his representatives. I do not think that a fair way of reading the contract, because the general words “or otherwise wilfully, wantonly, or negligently exposing himself to any unnecessary danger” follow an enumeration of specific cases, and the kind of case intended to be embraced by the general words must be such as the cases specifically enumerated. Now, the characteristic of the specifically enumerated cases is this—In them the danger was obvious. It was not that the thing might be dangerous according as the circumstances on subsequent examination turned out, but the thing itself must be dangerous. For example, “travelling by rail in any other than a passenger carriage,” or “acting in violation of the bye-laws of a railway or tramway company,” or “riding horse or cycle races or steeplechases”—all these things have got danger written on the face of them, and it does not depend upon an examination and analysis of the circumstances whether they are found to be dangerous or not, but they are seen to be dangerous. All that can be said in the present case is that the deceased did not sufficiently realise the cold of the water or his own capacity to stand cold, or that the boat was so constructed that it would be difficult to get into it without assistance. Whatever view as to the state of the facts the reclaimers choose to take—and they have left the matter rather vague—they are not able to say that what the deceased did was of itself a dangerous operation, or rather I should say they are not able to show that it was seen to be, or was obviously a dangerous operation. Accordingly, I think the circumstances of the case will not sustain the contention of the reclaimers, and I thoroughly concur in the judicious view of the case taken by the Lord Ordinary.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuers—Guthrie—Clyde.  
Agent—Wm. Ritchie Rodger, S.S.C.

Counsel for the Defenders—Ure—Constable. Agents—Mill, Bonar, & Hunter, W.S.