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Accident Insurance—Death Resulting from Insured Voluntary Act—Means Must Be Accidental

REVIEW OF RECENT DECISIONS

ACCIDENT INSURANCE—DEATH RESULTING FROM INSURED VOLUNTARY ACT—MEANS MUST BE ACCIDENTAL.

In Ramsey v. Fidelity and Casualty Co., 223 S. W. 841, (Tenn.) 13 A. L. R. 651 (note p. 660), recovery was sought on a policy of accident insurance and the claim based on the death due to blood poisoning following the extraction of a tooth. The court denied recovery, declaring that the bill of plaintiff did not allege the means causing the injury were accidental nor that the tooth was pulled accidently nor that the accident happened while the tooth was being pulled. According to the weight of authority it is held that death or injury does not result from accident or accidental means within the terms of an accident policy where it is the natural result of the insured's voluntary act, unaccompanied by anything unforseen, except the death or injury. Maryland Casualty Co. v. Spitz, 246 Fed. 817; Young v. Railway Mail Ass'n. 126 Mo. App. 325, 103 S. W. 557; Pickett v. Pacific Mut. L. Ins. Co., 144 Pa. 79. It is not shown in the Tennessee case that the means by which the gums were injured, were intentionally and purposely applied, but on the other hand it appears that the insured knew that the inevitable result of the pulling of the tooth would be to break down and lacerate the gum tissue. The means not being accidental nor the result following the pulling of the tooth and laceration of the gum tissue expected or forseen there can be no recovery on the policy. 224 N. Y. 18, 120, N. E. 56.

CONTRACT—CERTAINTY IN CONTRACT—SUBSEQUENT PAROL AGREEMENT NOT BINDING—WHEN.

The case of Fuller v. Presnell, 233 S. W., 502, was an action for damages for breach of contract for sale of lumber. The plaintiff obtained judgment for $1,710, and the defendant appealed. The contract is evidenced by the following writing signed by the defendant: "Received of Oscar Fuller two hundred fifty dollars ($250) being part payment for one hundred to one hundred fifty thousand feet of oak lumber to be delivered at Laflin, Mo., by Jan. 1, 1920, at $30.00 per thousand for 8 foot, and $35.00 per thousand for standard lengths. Same to grade No. 2 common and better and to be inspected at Laflin." (Sgd) "Chas. E. Presnell". Defendant in his answer set up fraud upon the part of plaintiff's agent in representing that lumber to "grade No. 2 common and better" meant the same as "mill run," whereas it meant a certain grade of lumber and that, therefore, he could not deliver under this contract the entire output of his mill. Subsequently defendant and plaintiff's agent