RECENT AMERICAN DECISION.

Court of Appeals of Kentucky.

HUTCHCRAFT'S EXECUTOR *v.* TRAVELERS' INS. CO. OF HARTFORD.

It is not essential, to make out a case of injury through external, violent, and accidental means, that the person injuring the insured did not mean to do so.

Where an accident insurance policy is expressed in general terms and specified things are excepted from the operation of the general terms, the latter are to be construed as covering all things coming within their scope, except those expressly excepted.

An exception, in an accident insurance policy, of intentional injuries inflicted by the insured or any other person, includes death by assassination for purposes of robbery, and no recovery can be had on the policy.

APPEAL from Bourbon Circuit Court.

William Lindsay and *Russell Mann*, for appellant.
James S. Pirtle, for appellee.

BENNETT, J. May 29, 1888. During the time that appellant's testator held two tickets of insurance in the appellee's company, insuring his life in the sum of $3000 each against death "through external, violent, and accidental means," he was waylaid and assassinated for the purpose of robbery. The appellee interposed two defences to the appellant's action to recover these sums: First, that the appellant's testator having been killed by intentional "means," his death was not accidental within the meaning of the terms of the policy, which insured him against death "through external, violent, and accidental means;" second, that the proviso in the policy expressly exempted the appellee from liability in case the appellant's testator came to his death through injuries intentionally inflicted by another person. These defences will be disposed of in their order.

1. In each ticket the appellee covenanted to pay $3000 to Hutchcraft's representative, if he should be killed "through external, violent, and accidental means." Accidents are of two kinds: First, those that befall a person without any human agency; as the killing of a person by lightning. Here the elemental properties of lightning and its flash are not

caused or controlled by human agency; but the fact that the person was struck by unintentionally placing himself within its range is as to him an accident. Second, those that are the result of human agency. The latter are divided as follows: First, that which happens to a person by his own agency, as if he is walking or running, and accidentally falls and hurts himself. Here he falls by reason of his agency in walking or running, but he did not intend to fall. He did not foresee that he would fall in time to avoid it. The fall was therefore accidental. Second, that which befalls a person by the agency of another person, without the concurrence of the latter's will; as where one standing on a scaffold unintentionally lets a brick fall from his hand, and it strikes a person below. Here the dropping of the brick, as it was not intended by the former, and was unforeseen by the latter, is in the broadest sense an accident. Third, that which a person intentionally does, whereby another is unintentionally injured; as where one intentionally fires a gun in the air, and accidentally shoots another person. Here the act of firing the gun was intentional, but the shooting of the person was unintentional. Therefore, on the part of the person firing the gun, the shooting of the other would be accidental, though not in as broad a sense as in the former case, because some part of his act was intentional; but as to the person shot, it was by purely accidental means. Fourth, so also, as we think, if one person intentionally injures another, which was not the result of a rencontre or the misconduct of the latter, but was unforeseen by him, such injury as to the latter, although intentionally inflicted by the former, would be accidental. When the injury is not the result of the misconduct or the participation of the injured party, but is unforeseen, it is as to him accidental, although inflicted intentionally by the other party. It is conceded that in the three instances first named the injury would be by accidental means. Nor doubtless will it be denied that, if a person were to maliciously fire his gun into a crowd of persons for the purpose of general mischief, or were to maliciously wreck a train of cars for the purpose of injuring whomever may be aboard, whereby one or more persons were shot or mashed, the casualty befalling

these persons, so far as they were concerned, would fall within the term of accidental means. In other words, we do not regard it as essential, in order to make out a case of injury by accidental means, so far as the injured party is concerned, that the party injuring him should not have meant to do so; for, if the injured party had no agency in bringing the injury on himself, and to him it was unforeseen—a casualty—it seems clear that the fact that the deed was wilfully directed against him would not militate against the proposition that as to him the injury was brought on by "accidental means."

2. That part of the proviso that is germane to the second ground of defence is as follows: "And no claim shall be made under this ticket when the death or injury may have been caused by duelling, fighting, wrestling, lifting, or over-exertion, or by suicide (felonious or otherwise, sane or insane), or by intentional injuries inflicted by the insured, or any other person." The fact that the insured engaged in a duel or fight, though forced upon him; the fact that he engaged in a wrestling match, however innocent; the fact that he engaged in lifting, though never so cautious; the fact that he over-exerted himself, though never so innocent of an intention of doing so—whereby he received injuries—are expressly excluded from the operation of the policy. Also the fact that the insured commits suicide, although insane, therefore in a legal sense accidental, excludes him from the benefit of the policy. The remaining clause stipulates for a further exemption of the appellee's liability in the event that intentional injuries are inflicted upon the insured by himself or any other person. It is contended by the appellant that the meaning of this clause is, that, "if the insured intentionally inflicted injuries upon himself, or if any other person intentionally inflicted injuries upon him, with his consent, or at his instance, then the appellee shall not be liable." A moment's reflection will show that the clause will not admit of this construction. The clause, when placed in juxtaposition with its antecedents, reads as follows: "No claim shall be made under this ticket when the death or injury may have been caused by intentional injuries inflicted by the insured or

any other person." The sentence, though awkwardly expressed, is complete, and clearly expresses the idea that, if the insured intentionally kills or injures himself by the infliction of bodily wounds, he thereby breaks the condition of the policy; or that, if he is intentionally killed or injured by any other person, by the infliction of bodily wounds, the condition of the policy is thereby broken. Therefore to add the words, "with his consent or at his instance," would have the effect of torturing the meaning of the language used beyond its legitimate import. By the terms of the contract the company undertakes to indemnify against death or injury effected "through external, violent, and accidental means." By virtue of this undertaking the company would be liable, if the death or injury should be effected by any external and violent means whatever, that was as to the insured accidental, except in so far as the company by its proviso limited its liability; for it is a well-known rule of construction, that, where the undertaking of a party is expressed in general terms, as in this case, and specified things, as in this case, are excepted from the operation of the general terms, such terms are to be construed as covering all things coming within their scope, except those that are expressly excluded. As, therefore, the assassination of Hutchcraft was as to him an unforeseen event —a casualty—his taking off was through external, violent and accidental means. But we also think the clause of the proviso that excludes the appellee's liability, in case death or injury is intentionally inflicted by any other person, applies to this case. We think, however, that said clause was intended to apply to such injuries by other persons as are intentionally directed against the insured, and not to such injuries as the insured may receive at the hands of the third persons who are attempting to do mischief generally, or who are attempting to injure any particular individual other than the assured, or class of individuals, or any kind of property; for in such cases it cannot be said that the injury was intentionally aimed directly and individually at the insured.

The judgment of the Circuit Court, overruling the demurrer of the appellee's answer, is affirmed.

What are "accidents," within the meaning of accident policies and what the effect of provisos or exceptions in such contracts, can best be ascertained by a brief review of some of the principal cases upon this subject, and the chronological order will answer for this purpose as well as any.

Hartman v. *Keystone Ins. Co.* (1853), 21 Pa. 466. The condition of the policy was that it should be void if the insured "shall die by his own hand in, or in consequence of, a duel." Death was caused by swallowing arsenic. It was *held*, that such a death was within the condition. "When the parties have put their contract in writing, their rights are fixed by it. One rule of interpretation is, that we must never attribute an absurd intent, if a sensible one can be extracted from the writing. No absurdity could be greater than a stipulation against suicide in a duel. The words 'die by his own hand' must, therefore, be disconnected from those which follow; standing alone, they mean any sort of suicide."

Southard v. *The Railway Passengers' Asso. Co.* (1868), 34 Conn. 574, U. S. D. C. The policy insured against death or injury "by violent and accidental means, within the meaning of the contracts and conditions annexed." The conditions specified certain modes of death or injury which were excluded from the policy. It was *held*, that the specified exclusions did not operate to make the principal terms more largely inclusive, but that the death, though violent, must still fall strictly within the principal terms and be caused by means that were accidental as well as violent. The insured was hurt internally by jumping in great haste from a standing railroad car at a station, and running a considerable distance, but his action was not necessary to his safety, but was voluntarily undertaken to effect an important object which required haste. The injury was not caused by "accidental means within the meaning of the contract." Per SHIPMAN, J. "The policy is one of indemnity against 'bodily injuries effected through *violent and accidental* means within the meaning of this contract and the annexed conditions.' Had the terms of the contract stopped at the words 'violent and accidental means,' there would be no difficulty in disposing of the question; for there was no accident, strictly speaking, in the means through which the bodily injury was effected. It would not help the matter to call the injury itself—that is, the rupture—an accident. That was the result, and not the means through which it was effected. Both were done by the claimant voluntarily, in the ordinary way, with no unforeseen, accidental, or involuntary movement of the body. There was no stumbling, or slipping, or falling. There was nothing accidental in his movements, any more than there was in his passing down the steps of his hotel or in walking on the street, during each of which he might have had a stroke of apoplexy. Thus, in jumping from the car and running, there was more violence, or, properly speaking, more force; but there was no more accident than in any ordinary movement of the body. All the accident there was, was the result of ordinary means, voluntarily employed, in a not unusual way. The conditions exclude death, when caused by duelling, fighting, etc. Now, it may be said that the exclusion of these specified causes, leaves, by fair implication, death from all other causes and under all other circumstances included in the contract. But, in applying the well-

known rule of construction, reference must be had to the main body of the contract and its subject-matter. It is not a contract of indemnity against death effected by all means. The cause of death or injury must be in all cases 'violent and accidental,' or the event is without the scope of the contract. The cases excluded are only those which belong to the same class. The insured jumped from the car with his eyes open, for his own convenience, and not from any perilous necessity. He encountered no obstacle in so doing. He alighted on the ground just as he intended to do. So, in running. In both cases, he accomplished just what he intended to do, in the way intended, and in the free exercise of his choice."

Brown v. *Railway Passengers' Asso. Co.* (1870), 45 Mo. 221. The policy was issued to an engineer, who was killed on his own locomotive. It provided against death "caused by accident while travelling by public or private conveyance provided for the transportation of passengers." It was *held*, that the deceased was insured against all accidents, without regard to the capacity in which he was acting. "It is strongly contended that a locomotive is not a conveyance for the transportation of passengers. This is true if the ticket applies solely and exclusively to passengers or travellers. But this ticket was designed to include something more than the ordinary risks incurred by a passenger. The locomotive is a necessary part of the conveyance. The ticket was a general accident, as contra-distinguished from a mere passenger's, ticket. When the ticket was sold, it was known that the insured was an engineer."

Welts v. *Conn. Mut. Life Ins. Co.* (1871), 48 N. Y. 34. By a condition, the policy was forfeited in case the insured entered into any military or naval service without the consent of the company. It was also provided that he was not insured against death from any of the casualties or consequences of war or rebellion; or from belligerent forces in any place where he (the insured) might be. The insured was employed in the army in building bridges, and, while so engaged, was killed by two of a party of men, not in uniform, who robbed the men employed upon the bridge. *Held*, that the service which was forbidden, was only such as would require the person to do duty as a combatant. That the "war or rebellion" was such as was carried on by the authority of some *de facto* government.

North Am. Life and Acc. Ins. Co. v. *Burroughs* (1871), 69 Pa. 43. An accident policy insured against death resulting, within twelve months from its date, in consequence of an accident. The insured was killed by an injury produced by a stroke from the handle of a pitchfork, which slipped while he was using it in loading hay. It was *held*, that the policy included a death from any unexpected event, happening by chance, and not occurring according to the usual course of things.

Shader v. *Railway Passengers' Asso. Co.* (1876), 66 N. Y. 441. An accident insurance policy contained a proviso that no claim should be made thereunder, "where the death or injury may have happened while the insured was, or in consequence of his having been, under the influence of intoxicating drink." The insured was killed by a pistol shot while dining with a friend. The evidence tended to show that he was at the time under the influence of intoxicating liquor, of which he had been drinking freely. The trial Judge charged as follows: "The question is

not simply whether he was under the influence of intoxicating liquor at the time, but whether the injury occurred in consequence of that; whether the injury was the natural and probable result of his being in that condition. The jury must see the connecting link between the injury and the condition he was in." This was *held* an error. "The first inquiry," say the Court, "which presents itself, is the construction to be placed upon the proviso. An exact and accurate interpretation of the language manifestly conveys the idea, that it was intended to comprehend all cases where injury or death might happen while the insured was under the influence of intoxicating drink, as well as such as might occur by the use thereof. As to the first class of cases stated in the proviso, the words imply that it is not required that the use of intoxicating liquors should be the moving cause in producing the injury or death, and it is quite sufficient to avoid a liability, that the person was under the influence of such stimulants, without regard to the effect which might result from such condition. The limitation in the policy relates to the condition of the insured, not to the cause which might produce death. And here lies the distinction which is to be drawn in its construction, for, by any other or different interpretation, the words used would not only be unnecessary, but meaningless and without point. As the policy was rendered void if the assured was injured or killed while under the influence of intoxicating drinks, it was not essential, to work a forfeiture, that injury or death should occur in consequence of the use of the same. As to the second class of cases, the policy was designed to provide for the possible contingency which might arise after the influence of intoxicating liquors had ceased to operate directly, and the subsequent effects produced thereby, in consequence of the previous use thereof. The intention evidently was to limit the liability of the company by the contract with the assured, and not to incur any responsibility, when the injury occurred while the assured was directly under the influence of, or where the result was remotely produced by, intoxicating drink. Accidental policies are issued principally to travellers, or persons exposed to unusual perils and dangers, and, the risks in such cases being extremely hazardous, it is by no means unreasonable that the insurer should require that the assured should be under no exciting influence, which may affect his self-possession or judgment, or seriously interfere with the free, full, and deliberate exercise of his faculties in protecting himself from accident or harm."

Bayliss v. *Travelers' Ins. Co.* (1877), U. S. C. Ct. E. Dist. of N. Y. A policy against accidental death provided that it did not cover "any death which may have been caused solely or in part by medical treatment for disease." The insured died in consequence of having inadvertently taken an overdose of opium, which had been prescribed by a physician on account of sickness. It was *held*, that this death was within the exception.

McCarthy v. *Travelers' Ins. Co.* (1879), U. S. C. Ct., E. Dist. of Wis. A policy provided that there should be no liability, if the insured should sustain bodily injuries effected through accidental means. The injury was claimed to have resulted from exercising with Indian clubs. The jury was instructed: "If the insured voluntarily used clubs for exercise in the way, and precisely as, he intended to do, and in the usual way for taking such exercise, and there did not occur

any unusual circumstance interrupting or interfering with such use, or causing any unforeseen, accidental, or involuntary movement of the body while exercising, and in such use the injury was received, it could not be said that the injury was effected by accidental means. But if there did occur any unforeseen or unexpected circumstance which interfered with or obstructed the usual course of such exercise, and there was thereby produced an involuntary movement, strain, or wrenching of the body, by means of which the alleged injury was occasioned, then such means was accidental within the meaning of the policy."

Bon v. *Railway Passengers' Asso. Co.* (1881), 56 Iowa 664. A policy provided: "The insurance shall extend only to bodily injuries, when accidentally received by the insured while actually riding on a public conveyance provided by common carriers for the transportation of passengers, and in compliance with all rules and regulations of such carriers, and not neglecting to use due diligence for self-protection." The insured was riding on a railroad train, and as it approached a station and was slowing up, he went on to the platform, and, while standing there, was thrown from the train by being jostled by another passenger on the platform, who was thrown against the insured by a sudden jerk of the train. The rule of the carrier, which was known to the insured, was that no one should stand on the platform. It was *held*, that, under such a state of facts, the verdict for the company should be directed.

Penfold v. *Universal L. Ins. Co.* (1881), 85 N. Y. 317. The policy contained a condition avoiding it in case the insured should "die by his own hand or act, voluntary or otherwise." It was *held*, that this did not cover the case of a death, purely accidental, caused by poison taken by the insured by mistake or ignorance, he being at the time sane. That the act stipulated against was suicide, and the words "voluntary or otherwise" precluded one claiming under the policy, if the death was suicidal, from setting up insanity.

Pollock v. *U. S. Mut. Acc. Asso.* (1883), 102 Pa. 230. An accident policy provided that it should not extend to death or injury caused "by the taking of poison." *Held*, that an involuntary taking of poison by mistake was within the provision.

Burkhard v. *Travelers' Ins. Co.* (1883), Id. 262. A policy against accidental death provided, "this insurance shall not extend to any case when the death or injury may have happened in consequence of voluntary exposure to unnecessary danger, hazard, or perilous adventure; walking or being on the road-bed or bridge of any railway are hazards not contemplated or covered by this contract, and no sum will be paid for disability or loss of life in consequence of such exposure or while thus exposed." The insured stepped off a railroad train, upon which he was travelling, when it came to a stop on a drawbridge at night, fell through a concealed hole in the bridge and was killed. It was *held*, that, where the general terms and scope of a policy are such as to cover a loss, conditions in the policy restricting liability, so expressed as to be capable of two meanings, should be held to have the meaning most favorable to the insured. Also, that this death was accidental, and was not within the condition as to "walking, etc.," as the obvious intent of this provision was to guard, not against a defective road-bed or bridge, but against the danger of in-

jury from trains passing thereon. The Court say: "The true principle of sound ethics is to give the contract the sense in which the person making the promise believes the other party to have accepted it. A just sense should be exercised in so interpreting it as to give due and fair effect to its provisions: 2 Kent, 557. When a party uses an expression of his liability, having two meanings, one broader and the other narrower, and each equally probable, he cannot, after an acceptance by the other contracting party, set up the narrow construction: 2 Whart. on Con. § 670. It is now well recognized as a general rule, that when a stipulation or exception on a policy of insurance is capable of two meanings, the one is to be adopted which is most favorable to the insured: May on Ins. §§ 172–9; Wood on Ins. §§ 141–6; *Allen* v. *Ins. Co.* (1881), 85 N. Y. 473; *Western Ins. Co.* v. *Cropper* (1858), 32 Pa. 351. In case of doubt as to the meaning of a term emanating from an insurance company, it is to be construed most strongly against the company: *Fowkes* v. *Ins. Co.* (1863), 3 B. & S. 917; *Wilson* v. *Ins. Co.* (1856), 4 R. I. 156; *Bartlett* v. *Ins. Co.* (1859), 46 Me. 500; *Ins. Co.* v. *Slaughter* (1870), 12 Wall. 404. To make him (the insured) guilty of a 'voluntary exposure to danger' he must intentionally have done some act which reasonable and ordinary prudence would pronounce dangerous. * * * It is true he voluntarily left the car; but a clear distinction exists between a voluntary act, and a voluntary exposure to danger. Hidden danger may exist; yet the exposure thereto without any knowledge of the danger does not constitute a voluntary exposure to it. The approach to an unknown and unexpected danger does not make the act a voluntary exposure thereto. The result of the act does not necessarily determine the motive which prompted the action. The act may be voluntary; yet the exposure involuntary. The danger being unknown, the injury is accidental. The language of the exception (as to 'walking or being, etc.') clearly implies two thoughts: one, that the insured must not be on the road-bed or bridge for any length of time; the other, that the prohibition is not to guard against injury resulting from a defective road-bed or bridge; but against the danger of injury from trains passing thereon. If the design was to apply the language to bridges defectively constructed or out of repair, it would not have been restricted to *railway* bridges."

Bloom v. *Franklin L. Ins. Co.* (1884), 97 Ind. 478. The policy provided that it should be forfeited in case the assured should die by reason of intemperance or while engaged in the known violation of law. The assured, whilst intoxicated, engaged in an assault and battery upon his sister-in-law, and his brother, while defending his wife, fractured his skull and killed him. The Court say: "The answer of the company averred, 'said B. (the assured), while in a state of intoxication, assaulted, etc., C., and while thus engaged in perpetrating said assault, D., the husband, for the purpose of lawfully defending his wife, struck B. upon the head with a jack-plane, or some other wooden instrument, thereby fracturing his skull and causing his death within a few hours thereafter.' The plaintiff asserts that the facts stated do not show that the assured died from the effects of intemperance, or that he met his death while engaged in knowingly violating the law. It is sufficient to state such facts as would enable the Court to conclude, as matter of law, that there was an assault and battery

committed. The facts stated warrant this conclusion. If the words employed are taken in their usual signification, it would seem quite clear that death in the known violation of any law, criminal or civil, would make the policy inoperative. Suppose that the law prohibits a person from approaching within a specified distance of a blast about to be fired, would not a known violation of such a law *increase the risk*, and be within the letter and spirit of the provision? But it is not every violation of law which should absolve the company, even though the law be a criminal one. Suppose a man violates the law against profanity, and is shot while so doing, should that absolve the company from liability?

"In our opinion the law is this: *A known violation of a positive law, either civil or criminal, avoids the policy, if the natural and reasonable consequences of the violation are to increase the risk; but does not avoid the policy, if the risk is not increased.* Whether the violation of the law was the proximate cause of death and was an act increasing the risk, must in general be determined from the facts of each particular case. There must, in all cases, be some causative connection between the act which constituted the violation of the law, and the death of the assured. The act of the insured was, in this case, the proximate cause of his death, within the meaning of the law. A man who makes a violent assault upon a woman, puts his own person in danger. The natural result of such an illegal act as that of the assured, was to bring his person in danger, and as death resulted, his own act was the proximate cause. While the unlawful act of the assured must lead, in the natural line of causation, to his death, in order to work a forfeiture, it is not necessary that the act should be the direct cause, nor that the precise consequences which actually followed should have been foreseen. It is enough if the act is unlawful in itself, and the consequences flowing from it are such as might have been reasonably expected to happen, for the ultimate result is traced back to the original proximate cause. A man who beats and maltreats another's wife may reasonably expect the husband to defend her, without being careful to select the means of defence or nicely weigh the degree of force."

Bois v. *Mass. Mut. Life Ins. Co.* (1885), 14 Ins. L. J. 237 (La). Where the person whose life is insured has occasioned the discharge of the pistol which killed him, the burden of proof is on the beneficiary to show that the discharge was accidental.

Bradley v. *Mut. Ben. Life Ins. Co.* (1871), 45 N. Y. 422. The policy provided that it should be void in case the insured should die "in the known violation of any law of the State he was permitted to visit. It was *held*, that the death must clearly appear to have been the natural and legitimate consequence of the violation of the law.

N. W. Mut. Life Ins. Co. v. *Hazelett* (1885), 105 Ind. 212. A provision in a life insurance policy, that if the assured, whether sane or insane, shall die by his own hand, the policy shall be void, has no application to a case where death results from an overdraught of whiskey taken without any intention of destroying life, by one who had become physically and mentally weak by causes beyond his control.

Accident Ins. Co. v. *Crandal* (1886), 120 U. S. 527. A policy of insurance against "bodily injuries effected through external, accidental, and vio-

lent means," and occasioning death or complete disability to do business, provided, that "this insurance shall not extend to death or disability which may have been caused wholly or in part by bodily infirmities or disease, or by suicide, or self-inflicted injuries." It was *held*, that a death by hanging one's self, while insane, was covered by the policy; that such death was not caused by "bodily infirmities, or disease, or suicide, or self-inflicted injuries," but was effected through "external, accidental, and violent means."

Sup. Council of O. of C. F. v. *Garrigus* (1885), 104 Ind. 133. The relief laws provided that benefits might be received by a member who was disabled by "disease or accident." The beneficiary was injured without his own fault, but by an intentional act on the part of another. It was *held*, that an injury intentionally inflicted by another, but without fault on the part of the injured, was an accident, within the meaning of the insurance contract.

Griffin v. *West. Mut. Asso.* (1886), 20 Neb. 620. The policy contained a provision that it should be void, if the insured should die "while violating any law." The insured with an accomplice went to the State treasury, and, presenting a pistol, demanded money. The treasurer handed over the money to them, and they started away with it and had nearly reached the outer door of the building, when they were fired upon by a policeman, and the insured was killed. It was *held*, that the policy was not avoided. "The act of the insured in obtaining the money was complete and he was endeavoring to make his escape. He, therefore, was not killed while violating the law."

Keels v. *Mut. Res. Fund L. Asso.* (1886), 29 Fed. Rep. 198; U. S. C. Ct. D. So. Car. A condition in a life insurance policy that it shall be void if the insured shall die by suicide, whether the act be voluntary or involuntary, does not apply, where the death is the result of accident or unintentional self-killing.

Freeman v. *Travelers' Ins. Co.* (1887), 144 Mass. 573. The policy insured against bodily injuries "effected through external, violent, and accidental means," and contained a proviso that the insurance should not "extend to any bodily injuries where death or injury *may* have happened in consequence of violent exposure to unnecessary danger, hazard, or perilous adventure," and a further condition that "the party insured is required to use all due diligence for personal safety and protection." The insured, who was the employé of a railroad company, was killed by a train, while upon the track, where he had been sent to shovel snow from the crossing. It was *held*, that such death was by "external, violent, and accidental means;" that such position was not "unnecessary exposure to danger;" and that the burden was upon the insurance company of showing that the insured had not used "due diligence for personal safety," etc.

Utter v. *Travelers' Ins. Co.* (1887), Sup. Ct. Mich. This policy was against death by "violent, external, and accidental means," and contained the following provisions: "No claim shall be made when the death or injury *may* have happened in consequence of voluntary exposure to unnecessary danger, or while the insured was, or in consequence of his having been, under the influence of intoxicating drink, or while engaged in, or in consequence of, any unlawful act." Also, "This insurance shall not be held to extend to disappear-

ances, nor to any case of death or injury, unless the claimant under policy shall establish by direct and positive proof that said death or injury was caused by external, violent, and accidental means, and was not the result of design, either on the part of the deceased or of any other person." The insured was a deserter from the army, and an officer of the law instructed to arrest him shot and killed him, upon the insured's appearing at the door of the house where he was stopping. The evidence was conflicting as to whether the officer knew that the man he shot was the person for whom he was searching, and as to whether the shooting was done in self-defence, because the officer was threatened with a pistol. It was *held*, that if the officer did not know that the insured was the party he fired at, and did not intend to kill him, it could not be claimed, as a matter of law, that the death was the result of design within the policy; and that the question whether the insured was doing an unlawful act at the time of the killing was for the jury. The trial Court was of the opinion "that the injury was a pistol-shot wound, and the firing of the pistol was not accidental, but designed by the firing party, and that the policy was not intended to insure against murder or wilful killing of any kind, but intended to insure against ordinary accidental means alone," and directed a verdict for the insurance company. The Supreme Court reversed, holding that the questions involved were for the jury, and in their opinion say: "The design intended by the terms of this policy must be the design that intended the actual result accomplished, and not the design of the act itself, which act resulted in the killing of one contrary to the design of the act. If, when Berry fired the shot, he did not know the man he fired at was Utter, and did not intend to kill Utter, it cannot be said that Utter lost his life by the design of Berry. Nor can it be held, as a matter of law, that Utter was engaged in an unlawful act, within the meaning of this policy. If, on being refused admission after rapping on the door, the officer had fired through the door and killed Utter, it could not be claimed that Utter was killed by design, or because he was engaged in any unlawful act; nor if Berry fired at the first head he saw poked out of the door, not knowing or caring who it was, can it be held that the death was by design against Utter, or in consequence of any unlawful act on his part."

The following positions would seem to be established by the foregoing authorities:—

"Accident" has the same meaning in a policy of insurance that it has in the ordinary affairs of every-day life. It is an unforeseen, fortuitous event; not happening through design or intention.

Where a policy provides that the death must be effected through "violent *and* accidental means," violence and accident must concur in producing the result.

A proviso that no claim shall be made in certain specified cases does not operate to make the principal terms more largely inclusive, but restricts them.

A specified case, excepted from the general terms of a policy by a proviso, in order to forfeit the policy, must be one which increases the risk, and not merely one which falls within the letter, or language, of the contract.

The expression "may have happened," in a proviso, does not include doubtful cases, where it is merely uncertain whether or not the death

occurred by reason of the causes specified. It must still be proved that the death was effected by some of the excepted causes.

A proviso may declare that the policy shall not cover the case of a death which happened either by a *specified* cause or while the insured was in a *specified condition*.

Where it is provided that the policy shall not cover a death which happens in consequence of, or while the insured was engaged in, a certain act, it is not sufficient to prove merely the act and the death; there must appear a connecting link between the act and the death.

Where the terms of a proviso are of doubtful, or capable of more than one, meaning, they are construed most strongly against the insurance company.

The intention of the injurer to do a hurt does not make the injury the less accidental, so far as the insured is concerned.

Where a policy provides that it does not cover a case of death happening through *design*, a particular design to injure or kill the insured is meant.

In *Hutchcraft's Ex.* v. *Travelers' Ins. Co.*, *supra*, the Court agree that the death was accidental, so far as the insured was concerned; and this view seems to be supported by the authorities. Was the death within the proviso? Three classes of cases are excepted from the general terms of the policy, in the following provision: "And no claim shall be made under this ticket when the death or injury may have been caused (1) by dueling, fighting, wrestling, lifting, or over-exertion; (2) by suicide, felonious or otherwise, sane or insane; (3) by intentional injuries inflicted by the insured or any other person." For the purposes of this case, the proviso is as if it read, "* * * when the death may have been caused by intentional injuries inflicted by the insured or any other person." The Court say this clause means, "that if the insured intentionally kills or injures himself by the infliction of bodily wounds, he thereby breaks the condition of the policy; or that, if he is intentionally killed or injured by any other person, by the infliction of bodily wounds, the condition of the policy is thereby broken." The Court refer the adjective "intentional" to the "death," and not to the "injuries." This construction of this clause does not appear to be correct. If the "death" was "intentional," it would seem not to be "accidental," and therefore, it would be without, and not within, the policy, which is against accident. And in that case, of course, there could be no claim under the policy, not because of the proviso which excepted from the general terms certain kinds of accidental death, but because the death happened from a risk not insured against.

The adjective "intentional" in this clause qualified the injuries, whether inflicted by the insured or other person, and therefore characterizes the same kind of act on the part of the insured or any one else. In the case of the insured, this cannot be held to mean "intentional death," for this has already been provided for by the clause against suicide, which covers all cases of intentional death on his part. This construction also makes the whole proviso absurd, for it then would read "when the death may have been caused by intentional death." To hold, however, that the adjective qualifies the word "injuries" gives the clause a perfectly intelligible meaning, and shows that the policy is intended to provide for an accepted class of causes of acci-

dental death, in addition to the classes in the first and second clauses of the proviso. For while the "injuries" inflicted may have been "intentional," the death may still be "accidental," and if, in a given case, the death was actually caused by these "intentional injuries," then, although "accidental," it is not covered by the policy.

The question, therefore, in each case would be, was the death caused by the injuries inflicted?

This case seems to have come before the Court on a demurrer to the answer filed by the insurance company, and the Court of Appeals affirm the judgment of the lower Court in overruling this demurrer. The Court in their opinion say: "He (the insured) was waylaid and assassinated for the purpose of robbery." This statement would generally be considered to be a conclusion from a series of facts stated in the pleadings or proved in evidence. If the answer simply sets forth the conclusion which is stated in the opinion, it would seem that a mistake in pleading had been made, and there had been raised a question of law for the Court, when there should have been a question of fact for the jury; with, perhaps, happier results for the beneficiaries under this policy.

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In the following recent cases, conditions in accident and life insurance policies, similar to those considered above, have been construed by the Courts:

Bacon v. *U. S. Mut. Accident Asso.* (1887), 44 Hun (N. Y.), 599. Death resulted from a malignant pustule, which was caused by poison communicated from the skins of diseased animals; the policy insured against death "by external, violent, and accidental means," and excepted death by taking poison. *Held*, that the insured was liable.

Paul v. *Travelers' Ins. Co.* (1887), 45 Id. 313. Death was caused by the accidental inhaling of escaping illuminating gas by the insured, while asleep in his bed-room at a hotel; the policy covered death "through external, violent, and accidental means," but excepted bodily injuries, "of which there shall be no external and visible sign upon the body," and "death by the taking of poison, contact with poisonous substances, or inhaling of gas, or by any surgical operation, or medical treatment." *Held*, that the death was within the policy, and the insurer was liable. The words "inhaling of gas," in the exception, referred only to the use of gas in dentistry, surgery, or other similar manner.

U. S. Mut. Accident Asso. v. *Newman*, S. Ct. App. Va., Dec. 13, 1887. Death was caused in the same manner as in the last cited case; the policy covered the same risks, but excepted death caused "by taking of poison, or by contact with poisonous substances." *Held*, the death of the insured was within the policy.

Travelers' Ins. Co. v. *McConkey* (1888), 127 U. S. 661. The insured was found dead from a pistol-shot through the heart. There was no evidence to show whether his death occurred by his own act, or by that of another person; the policy insured against death "through external, violent, and accidental means," but excepted death by "suicide, felonious or otherwise, sane or insane," or "intentional injuries inflicted by the insured or any other person." *Held*, that the burden of proof was upon the claimant to show that death was caused by external violence and accidental means.

McGlinchey v. *Fidelity & Casualty Co.* (1888), S. Jud. Ct. Me., 27 AMERICAN LAW REGISTER, 607, 663. Death caused by the exertion of controlling a runaway horse, or by fright occasioned to the driver by the peril of his situation, is covered by an accident insurance policy. A clause excepting bodily injuries, of which there is no external and visible sign upon the body, does not extend to injuries, which result in death.

Travelers' Ins. Co. v. *Jones* (1888), S. Ct. Ga., Aug. 28, 1888. The insured fell and was injured while attempting, on a dark and rainy night, and with two packages in his hands, to cross a railroad trestle, which he knew to be dangerous, although other ways to his home were open to him. *Held*, that the injury was caused by "voluntary exposure to unnecessary danger" thus falling within the exception in the policy.

National Benefit Asso. v. *Grauman* (1886), 107 Ind. 288. A policy limiting the risk to death "proximately caused by physical injuries, of which there shall be some visible external sign," covers death from apoplexy, resulting from an injury caused by an accidental fall.

Tennant v. *Travelers' Ins. Co.* (1887), U. S. Circ. Ct. N. D. Cal., 31 Fed. Rep. 322. The insured, who was subject to epileptic fits, was found dead in a bath. The testimony showed that the entrance into the bath of one in his physical condition would be likely to result in an epileptic attack. *Held*, that the death was not occasioned "by external, violent, and accidental means."

In the English case of *Winspear* v. *Accident Ins. Co., Lim.* (1880), L. R. 6 Q. B. D. 42, an accident insurance policy, which provided that it should not extend "to any injury caused by or arising from natural disease or weakness, or exhaustion consequent upon disease," was *held* to cover a case where the insured, whilst fording a stream, was seized with an epileptic fit, fell and was drowned.

In *Lawrence* v. *Accidental Ins. Co., Lim.* (1881), 7 Id. 216, where the policy expressly excepted "death arising from fits, or other disease, whether causing such death directly or jointly with an accidental injury," the insured, while on the platform of a railway station, was seized with an epileptic fit, fell upon the track before a moving engine, and was run over and killed. *Held*, that the death was within the policy.

Kerr v. *Minnesota Mut. Ben. Asso.* (1888), S. Ct. Minn., 27 AMERICAN LAW REGISTER, 803. Suicide to avoid arrest and trial for a crime committed by the insured, does not fall within a provision of a policy, excepting death "in consequence of the violation of any criminal law."

Darrow v. *Family Fund Soc.* (1886), 42 Hun (N. Y.), 245, and *Freeman* v. *Nat. Benefit Soc.*, Id. 252. Suicide by insured does not avoid a policy, providing that it shall be void, if the insured shall die "in violation of, or attempt to violate, any criminal law."

Scarth v. *Security Mut. Life Soc.* (1888), S. Ct. Iowa, 27 AMERICAN LAW REGISTER, 803. Suicide, committed while the insured is temporarily insane and in no manner conscious or responsible, avoids a policy providing that it shall become void, if the insured "shall commit suicide, felonious or otherwise, sane or insane."

To the same effect is *Streeter* v. *West. Un. Mut. Life Soc.*, S. Ct. Mich., Feb. 15, 1887.

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