1956
*May 8, 9
*Oct. 24

R. C. STEVENSON, C.A., as Attorney in Canada for the Non-Marine Underwriters at Lloyds (*Defendant*) ..... } APPELLANT;

AND

RELIANCE PETROLEUM LIMITED (*Plaintiff*) ..... } RESPONDENT.

AND

RELIANCE PETROLEUM LIMITED (*Plaintiff*) ..... } APPELLANT;

AND

CANADIAN GENERAL INSURANCE COMPANY (*Defendant*) ..... } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Insurance—Automobile liability policy—Loss arising from "ownership, use or operation" of vehicle—Tank truck delivering gasoline at service station—Negligence of driver.

Insurance—General liability policy—Express exclusion of "claim arising or existing by reason of . . . any motor vehicle"—Meaning and effect—Delivery of gasoline by tank truck—Negligence resulting in damage to third persons.

A company engaged in the distribution of petroleum products employed in that business tank trucks with which gasoline and other products were delivered to service stations. While gasoline was being delivered from one of these tank trucks it escaped as a result of the negligence

of the driver of the truck and caught fire, and the fire caused extensive damage to the service station and to property of other persons then on the premises. The company paid the claims of the persons damaged, and then sought indemnity under two policies of insurance.

Held: The company was entitled to recover under one policy, but not under the other.

The first policy, an automobile liability policy, expressly insured against liability "arising from the ownership, use or operation" of the vehicle, and the loss clearly arose from the "use" of the tank truck within the meaning of the insuring clause. That term included not only the transportation of the gasoline from the company's premises to the service station but also its delivery into the tanks at the service station. (*Per curiam.*)

The second policy, however, was a general liability policy, and specifically excluded "any claim arising or existing by reason of . . . Any motor vehicle". This must be taken to be an exclusion of liability arising in any way from the ownership, use or operation of an automobile, or precisely what was covered by the other policy. The exclusion extended even to the finding that the truck driver had been negligent in not ascertaining the quantity of gasoline already in the tank before starting to deliver it, since this was merely a circumstance annexed to the act of delivery. (*Per* Kerwin C.J. and Taschereau, Rand and Cartwright JJ.; Locke J. *contra.*)

Per Locke J. (*dissenting in part*): The loss was covered in part by the second policy as well as the first. The risk covered by this policy was not defined by statute, and the policy was to be construed *contra proferentem. Anderson v. Fitzgerald,* (1853), 4 H.L. Cas. 484 at 507, applied. The liability for the negligent act of the driver fell squarely within the insuring clause and was not excluded by the special exclusion, construed, as it should be, in the sense in which the insured person might reasonably understand it; if the insurer had intended to exclude this risk it should have done so in clear and unambiguous terms, which admitted of no doubt. *Life Association of Scotland v. Foster et al.,* (1873), 11 M. (Ct. of Sess.) 351 at 371; *Provincial Insurance Company, Limited v. Morgan et al.,* [1923] A.C. 240 at 250, referred to. The insurer had therefore committed a breach of its contract in declining to investigate the claims made against the insured, to conduct the defence of the litigation and to pay the judgments up to the limits in the policy. The action against this insurer was one for damages for breach of contract, and the insurer's conduct amounted in law to a waiver of its right to insist upon compliance by the insured with the provisions of the contract as to admitting liability or settling claims. *Jureidini v. National British and Irish Millers Insurance Company, Limited,* [1915] A.C. 499 at 505, 507, applied.

APPEALS from the judgment of the Court of Appeal for Ontario (1), on appeal from the judgment of Spence J. (2) in two actions tried together.

(1) [1954] O.R. 846, [1954] 4 D.L.R. 730.

(2) [1953] O.R. 807, [1953] 4 D.L.R. 755.

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STEVENSON v. RELIANCE PETROLEUM LIMITED

RELIANCE PETROLEUM LIMITED v. CANADIAN GENERAL INSURANCE COMPANY

B. J. Thomson, Q.C., for the defendant Stevenson, appellant.

W. G. Burke-Robertson, Q.C., for the plaintiff, appellant and respondent.

R. F. Wilson, Q.C., for the defendant Canadian General Insurance Company, respondent.

The judgment of Kerwin C.J. and Taschereau J. was delivered by

THE CHIEF JUSTICE:—In the action by Reliance Petroleum Limited against R. C. Stevenson, C.A., in his capacity as attorney in Canada for the Non-Marine Underwriters at Lloyds, Spence J., the trial judge (1) considered that the liability of Reliance for the negligence of their employee Anstey arose out of the use of the tank truck and, therefore, the claim fell within the following clause of the policy of insurance issued by Lloyds to Reliance:—

> The Insurer agrees to indemnify the Insured . . . against the liability imposed by law upon the Insured . . . for loss or damage arising from the ownership, use or operation of the automobile.

We are not concerned with the legislation respecting automobile insurance, to which counsel for Lloyds referred, but with the terms of the policy. There is no doubt on the evidence that Anstey was negligent and that a liability was imposed by law upon Reliance for the loss or damage detailed in the reasons for judgment in the Courts below. The tank trucks, which admittedly were covered by the policy, were stated, in the application therefor, to be used in the business of the insured, which was that of distributing oil and gasoline. These tank trucks were not merely to transport those products to service stations, but they were equipped so as to permit the discharge of gasoline into the tanks in such stations through faucets and hose. In the Court of Appeal (2) Roach J.A. considered that what was done in the present case fell as well within the "operation" as the "use" of the tank truck and, in fact, that these two terms were synonymous. With respect, I am unable to agree, as it must be taken that the two words were inserted to denote different things and I am not satisfied that "operation" by itself would be sufficient to cover the cir-

(1) [1953] O.R. 807, [1953] 4 D.L.R. 755.

(2) [1954] O.R. 846, [1954] 4 D.L.R. 730.

cumstances with which we are dealing. However, the liability imposed upon Reliance was for loss or damage arising from the "use" of the tank truck and that is sufficient to warrant the dismissal of Lloyds' appeal with costs.

The appeal by Reliance against the dismissal by the Court of Appeal of its action against Canadian General Insurance Company raises different problems, only one of which, however, I find it necessary to consider. That company had issued to Reliance what is called a "GENERAL PUBLIC LIABILITY POLICY" and it is not suggested that the claims advanced by Reliance fall within the terms of the policy itself, because it covered merely the liability of Reliance for damages caused by bodily injury, sickness, or disease. In a "PROPERTY DAMAGE ENDORSEMENT" attached to the policy it was stated that the endorsement was issued "In consideration of an additional premium", but the body of the document shows that the additional premium was included in that prescribed for the policy. By para. 1 of this endorsement the company agreed:—

> TO PAY on behalf of the Insured all sums which the Insured shall become obligated to pay by reason of the liability imposed upon the Insured by law, or assumed by the Insured under contract as set forth hereinafter, for damages because of injury to or destruction of property caused by accident occurring within the Policy Period and while this Endorsement is in force.

However, this agreement was "subject to the Statements, Exclusions and Special Conditions of the Policy" and in the policy, under the heading "EXCLUSIONS", appears the following:—

> This Policy shall have no application with respect to and shall not extend to nor cover any claim arising or existing by reason of any of the following matters:
>
> * * *
>
> 3. Any motor vehicle (including trailer or semi-trailer) that is required by law to have a license or permit, and which is off premises owned, rented or controlled by the Named Insured, or which is owned, hired or leased by the Insured, and, except with respect to operation by independent contractors, the ownership, maintenance or use, including loading or unloading, of any (a) watercraft while away from such premises or (b) aircraft.

Differing from Lloyds' policy, which was a standard automobile insurance policy, the "PROPERTY DAMAGE ENDORSEMENT" of Canadian General Insurance Company when read, as it must be, subject to exclusion no. 3, was not to cover the insurance of automobiles, but other forms of

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public liability. In fact the very kind of insurance covered by Lloyds for "loss or damage arising from the ownership, use, or operation of the automobile" is clearly and specifically excepted from the risk undertaken by Canadian General Insurance Company.

The appeal by Reliance should be dismissed with costs.

RAND J.:—The questions on this appeal are whether the loss suffered is within the general public liability policy of the respondent Canadian General Insurance Company, or within the motor vehicle liability policy of the appellant Lloyds, or both; but notwithstanding Mr. Thomson's comprehensive argument I am of the opinion that the judgment of the Court of Appeal (1) was right.

His first contention is that the damage did not arise from the "use" of the automobile as that word appears in Lloyds' policy:

> The Insurer agrees to indemnify the Insured . . . against the liability imposed by law upon the Insured . . . for loss or damage arising from the ownership, use or operation of the automobile within Canada . . .

The main ground is that what was present was not negligence in any function attributable to an automobile: it was negligence in a function added to but distinct from that of an automobile, that is, the discharge of gasoline into the tank of a service station: the want of care of an employee in the course of work dissociated from operation or use of the truck. He classified what was being done with a number of examples of similar non-automobile uses of such a vehicle: receiving visitors on a home trailer while stationary; using spray-painting equipment set up on and moved from place to place on a truck; a circus truck carrying a cage from which a lion escapes and does mischief; a peanut or like familiar stand set up in a truck and disposing of its wares at different places. These can, no doubt, be described as separate and distinct in their nature and purpose from that of the automobile; the use of the truck can properly be differentiated from the function of the apparatus or means conveyed; but the question is whether we have here such a severable activity.

(1) [1954] O.R. 846, [1954] 4 D.L.R. 730.

Was the negligence of the employee in the course of work other than that of his operation or use of the truck? What was the undertaking entered upon by means of the truck? It was to carry gasoline products for delivery at filling stations, not merely to carry; delivery was as much a part of what was being done by means of the truck as the carriage.

Did the fire, then, result from negligence in delivering the gasoline? I cannot see how that can be seriously doubted. For negligence we must have human action: the truck is not "self-operating" or "self-using"; "use" implies human direction and utilization of a means; it is the combination of the two that constitutes the act to which innocence or negligence is to be imputed. That is the act intended to be embraced by the language of the clause. Here the overflow was physically the direct result of the pressure from the oil in the tank truck which was then under the control of the driver. His failure to ascertain the capacity of the underground tank and to remain at the truck faucet or closing valve constituted negligence in relation to the use of the truck in discharging the gasoline. That was part of the function of the tank truck and does not come within the class of differentiated uses mentioned.

An analogous "use", as distinguished from "operation", is exemplified in the case of a bus. The undertaking in such a case includes the entrance and exit to and from the bus of passengers. If the steps are defective and a passenger is injured, could it be said that injury did not arise out of the "use"? The expression "use or operation" would or should, in my opinion, convey to one reading it all accidents resulting from the ordinary and well-known activities to which automobiles are put, all accidents which the common judgment in ordinary language would attribute to the utilization of an automobile as a means of different forms of accommodation or service. It may be said that in these instances "use" and "operation" are equivalents: but the statute uses both words and meaning can be given to each in this manner where the "use" is that in fact of the automobile.

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Rand J.

Canadian General Insurance Company claimed exemption on two grounds, but I find it necessary to deal with one only. Its general contract is to indemnify the insured against liability imposed by law for damages to property "caused by accident". The exclusion is in this language:

> This Policy shall have no application with respect to and shall not extend to nor cover any claim arising or existing by reason of any of the following matters:
>
> * * *
>
> 3. Any motor vehicle . . . which is owned, hired or leased by the Insured. . . .

I agree with Roach J.A. that damage from accident arising by reason of "any motor vehicle" includes the damage done here. That phrase contemplates damage done by such a vehicle in use or operation within the scope and course of its ordinary functions. Here the insured is engaged in selling gasoline and other automobile supplies and in delivering them by means of tank trucks, a commercial activity that has become of wide dimensions. What the clause aims at is to exclude from its coverage the area of automobile insurance and to embrace public liability arising from other causes than automobiles. It is expressed in broad but unambiguous language which is to be interpreted in the light of the common knowledge of this new feature of our social condition.

But "use", it is argued, is to be distinguished from "operation"; that the condition of this exclusion, being in derogation of the general language of liability, must be confined to the narrowest common function of automobiles which the trial judge found to be "operation". The words can, obviously, be given distinct meaning by limiting the scope of "operation" to the mere locomotion of the vehicle, and attributing to "use" the discharge of the gasoline. But this limitation must be rejected because of the associated language and because of its overriding implication involving all liability related to an automobile. The fact that in the statutes of Ontario automobile insurance is dealt with in a most particularized manner must be kept in mind when we are dealing with insurances against public liability and the presence of such an exclusion.

I have not overlooked the finding of the Court of Appeal that the truck driver was negligent in not measuring the depth of gasoline in the tank before commencing to deliver.

But, just as the failure to remain at the truck during the discharge, that was merely a circumstance annexed to his act of delivery; the cause of the disaster was the unattended discharge into an unexamined tank, a composite negligent act in the operation of the truck.

I would, therefore, dismiss the appeal with costs.

LOCKE J. (*dissenting in part*):—These two appeals were heard together and were taken from two judgments of the Court of Appeal for Ontario (1), one of which dismissed the appeal of the appellant Stevenson from the judgment of Spence J. at the trial (2), the other allowed the appeal of the respondent Canadian General Insurance Company from a judgment of that learned judge delivered at the same time. As the evidence as to the occurrence which gave rise to the claims was equally applicable to both actions, they were, by consent, tried together.

The actions were brought upon policies of insurance issued by the Non-Marine Underwriters at Lloyds and by Canadian General Insurance Company, and the questions to be determined are as to the construction of the language of these policies. It is, however, necessary to consider the evidence to assist in determining these questions of construction.

Reliance Petroleum Limited is a distributor of oil and oil products in London, Ontario, and makes its deliveries of gasoline to service stations in that vicinity in tank trucks. On September 1, 1951, Ronald Riddell, the operator of a service station rented by him from the Reliance company, ordered by telephone a quantity of standard and ethyl gasoline. Anstey, an employee of the Reliance company, drove one of its gasoline trucks, which carried five tanks, to the service station to make the delivery. The tanks carried on the truck were each equipped with faucets to which a hose might be connected for delivering the gas into underground tanks. These faucets were operated by a spring mechanism so designed that it was necessary to hold them open while gas flowed from the tank by the force of gravity. After delivering the 200 gallons of ethyl gasoline which had been ordered, Anstey connected the hose to the faucet of

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Locke J.

a tank carrying standard gasoline, of which, according to him, Riddell had ordered 400 gallons. Without measuring the quantity of gasoline in the underground tank to which the delivery was being made, he then, instead of remaining at the faucet, as required by the regulations made under *The Gasoline Handling Act,* R.S.O. 1950, c. 156, placed a stick, carried by him on the truck for the purpose, in such a manner as to keep the spring mechanism of the faucet open, and left the truck apparently for the purpose of obtaining payment for the gasoline being delivered. While he was thus absent, due to the fact that the underground tank already contained more gasoline than Anstey had thought, it overflowed. Gasoline spreading into the garage on the service station property and then igniting caused extensive damage.

Actions to recover damages for loss sustained were brought against the Reliance company by five persons who had personal property on the premises, by the owner of the service station property and by Riddell, and judgments were recovered which, with costs, totalled $15,498.40. In addition, the company incurred legal costs in connection with the actions totalling $934.70.

Both Lloyds and Canadian General Insurance Company took the attitude that the Reliance company was not insured against this risk by their respective policies. Lloyds, while disputing liability, entered into the usual non-waiver agreement with the Reliance company and took part in negotiations for settlement of the claims and in the defence of the actions that were brought. Canadian General Insurance Company, however, declined to take any part in the matter, preferring to stand upon the ground that its policy did not insure risks of this nature.

While the learned trial judge did not specifically so find, it is implicit in the reasons for judgment delivered by him that he considered Anstey's conduct negligent and as having at least contributed to the loss sustained. The judgment of the Court of Appeal, delivered by Roach J.A., found in terms that Anstey had been negligent in allowing the gasoline to spill out on the surface of the area and in failing, as required by regulations made under *The Gasoline Handling Act,* to remain in constant, uninterrupted control of the spring faucet at the rear of the tank truck. Apart

from the regulations, the learned judge said that a common law duty rested upon Anstey to use consummate care in handling the gasoline and that he had failed in that duty.

The policies differ in their nature and must be considered separately. The policy issued by Lloyds had originally been issued through their representative in Canada to McManus Petroleums Limited of London on October 27, 1948, and continued by renewal certificates in the name of Reliance Petroleum Limited. The last of these which continued the policy in force was dated October 27, 1950.

The policy as originally issued was the standard owner's form of automobile insurance approved by the Superintendent of Insurance for use in Ontario, and by the renewal certificate, all its terms, provisions and conditions were continued in force for the period of a year. Apparently no new application was taken from the Reliance company, the renewal certificates stating that the insured, by accepting the certificate, renewed and reaffirmed as of the date of the renewal the statements in the signed application in the policy that was renewed. The business of McManus Petroleums Limited was described in the application made by it as gas and oil distributors, and in answer to the question as to the purpose to which the insured automobiles would be chiefly used, the answer made was "Incidental to Insured's Business". No description of the vehicles intended to be insured appears in the material filed at the trial, the application referring to a "fleet schedule attached". It is, however, common ground that the insured vehicles described in the schedule included tank trucks of the nature of the one driven by Anstey and that it was one of those intended to be covered.

The policy, as required by s. 207 of *The Insurance Act*, R.S.O. 1950, c. 183, insured, *inter alia*, the owner against the liability imposed by law upon it for loss or damage arising from the ownership, use or operation of the automobile within Canada resulting from damage to property. The question is as to whether the liability of the Reliance company for Anstey's negligent act is covered by this language.

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Spence J. was of the view that it arose out of the use of the tank truck and so the risk was insured. Roach J.A. considered that it fell within both the words "use" and "operation".

The argument addressed to us on behalf of Lloyds, put briefly, is that the history of the Ontario legislation regarding automobile insurance since it was first referred to by that name in c. 30 of the statutes of 1914, and the changes made since that time by the introduction of the financial responsibility provisions in 1930, when the words "ownership, maintenance, use or operation" first appeared, show that it was the intention to provide the forms of policies designed to insure against an automobile accident in the commonly conceived sense of that expression and to provide indemnity which would be available to persons injured or for damage occasioned by the operation of the automobile as a means of transport on the highways and elsewhere. This, it is contended, indicates that neither the expression "operation" nor "use" was intended to apply to an occurrence such as this where the vehicle was stationary and the negligence was in the operation of the faucet designed to permit the discharge of gasoline from the tanks.

This contention has been most ably advanced by Mr. Thomson but I am unable to accept it. It is the insuring contract and not the statute that we are required to construe. The meaning of these words is not to be considered standing alone but in the context in which they are employed in the contract and effect is to be given to the intention of the parties collected from their expression of it as a whole.

The policy was issued in acceptance of the application and the application was, by its terms, made part of the contract of insurance. The tank trucks insured were, as stated in the application, to be used in the business of the insured, which was stated to be that of distributing oil and gas. These tank trucks were designed both as a means of transporting, *inter alia*, gasoline to filling stations and also discharging the material into tanks through the faucets and connecting hose. In my view, the operation of manipulating the faucets for the purpose of permitting the gasoline to flow from the tank truck to the underground tank at the

filling station was a use of the truck, within the meaning of the insuring clause in the contract, equally as the transport from the premises of the insured to the filling station was within that expression.

Canadian General Insurance Company's policy, described on its face as a "General Public Liability Policy", was issued to the Reliance Company on June 22, 1950. By the policy itself, as distinct from the property damage endorsement attached to it, the insurer agreed to indemnify the insured to the extent provided against damages because of bodily injury, sickness or disease as set forth in the insuring agreements, subject to certain exclusions and special conditions. One of the exclusions read:—

> This Policy shall have no application with respect to and shall not extend to nor cover any claim arising or existing by reason of any of the following matters:
>
> * * *
>
> 3. Any motor vehicle (including trailer or semi-trailer) that is required by law to have a license or permit, and which is off premises owned, rented or controlled by the Named Insured, or which is owned, hired or leased by the Insured, and, except with respect to operation by independent contractors, the ownership, maintenance or use, including loading or unloading, of any (a) watercraft while away from such premises or (b) aircraft.

By the policy, the insurer further agreed to pay on behalf of the insured all sums which it should become obligated to pay by reason of the liability imposed upon the insured by law for damages because of bodily injury, sickness or disease, including death, at any time resulting therefrom caused by events occurring within the policy period and suffered or alleged to have been suffered by any person or persons, to serve the insured by the investigation of any such claims and to defend in its name on its behalf any suit claiming damages on account of such injuries. By the special conditions the insured was required to give the insurer notice of any such claim and the insurer was entitled to determine whether it should be settled or litigated. It was further provided that the insured should not voluntarily assume or acknowledge any liability or interfere in any negotiation or legal proceeding conducted by the insurer on account of any claim, nor, except at its own expense, settle any claim. Compliance with these conditions was stated to be a condition precedent to the obligation of the insurer to indemnify the insured.

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The property damage endorsement made "subject to the Statements, Exclusions and Special Conditions of the Policy" obligated the insurer to pay all sums which the insured should become obligated to pay

> by reason of the liability imposed upon the Insured by law . . . for damages because of injury to or destruction of property caused by accident occurring within the Policy Period and while this Endorsement is in force.

The obligation of the insurer to serve the insured by the investigation of claims and to defend actions against the insured, as contained in the policy itself, was repeated. A further clause in the endorsement, so far as it concerns the present matter, read:—

> This Endorsement shall have no application with respect to and shall not extend to nor cover any claim for injury to or destruction of (a) property owned or occupied by or leased to the Insured.

The property occupied by Riddell as a service station was in November 1950, owned by John J. Gardiner and Leona Gardiner and leased by them to the Reliance company for a term of 5 years. The property, together with the buildings erected upon it and certain equipment used in the operation of the filling station, was in turn sublet by the Reliance company to Ronald E. Riddell by a lease which was in effect at the time the fire occurred.

The actions brought were compromised by the Reliance company, with the approval of Lloyds but without the approval of Canadian General Insurance Company, for amounts which were found by the learned trial judge to have been reasonable. In some of the cases, evidence was taken at a trial and liability found. In others, apparently liability was admitted and judgment entered for the amount agreed upon. These judgments were paid by the Reliance company before the present actions were commenced.

It is contended by Canadian General Insurance Company that the insured did not comply with the conditions of the policy above referred to, requiring it to refrain from acknowledging any liability or interfering in any negotiations for settlement of claims and from paying claims the extent of which had not been finally determined by judgment after an actual trial of the issue of negligence. The learned trial judge considered that this defence was not open to the insurance company, a conclusion with which I respectfully agree.

While Canadian General Insurance Company did not repudiate the policy by contending that the risk had never attached, it took the attitude that the damages caused or contributed to by Anstey's negligence did not fall within the terms of the contract. In my opinion, this position is untenable. If, as I think to be the case, the risk was insured, the insuring company committed a breach of its contract in declining to investigate the claims, to conduct the defence of the litigation and to pay the judgments to the extent the policy provided. The action is one for damages for breach of the contract and, in my opinion, the conduct of the insuring company amounted in law to a waiver of its right to insist upon compliance by the insured in these respects with the terms of the contract, as was found in similar circumstances by the Supreme Court of the United States in *St. Louis Dressed Beef and Provision Company v. Maryland Casualty Company* (1). The legal consequences of the action of the insuring company in this matter do not differ in this respect, in my opinion, from that resulting from the repudiation of liability based upon charges of fraud and arson considered in *Jureidini v. National British and Irish Millers Insurance Company, Limited* (2). I refer to the judgments of Viscount Haldane L.C. at p. 505 and of Lord Dunedin at p. 507.

The language of exclusion 3 has quite understandably given rise to a difference of opinion. Spence J. considered that the purpose of the policy was to insure losses due to accidents in the general conduct of the business of the insured and that a loss due to the exploding or igniting of petroleum products was a loss within the contemplation of both parties. Roach J.A., saying that there could never be an accident "caused by" the mere existence of a motor vehicle, considered that what was intended to be excluded was an accident caused by the negligent use or operation of a motor vehicle and that this was such an accident.

It is to be remembered that, unlike the form of policy issued by Lloyds, the risk to be insured by this policy was not defined by statute. The wording of the policy is that of the insurance company and it is to be construed, in my opinion, *contra proferentem: Anderson v. Fitzgerald* (3).

(1) (1906), 201 U.S. 173. (2) [1915] A.C. 499.
(3) (1853), 4 H.L. Cas. 484 at 507, 10 E.R. 551.

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The language of the property damage endorsement forming part, according to the company's own designation, of a general public liability policy whereby it agreed to pay on behalf of the insured all sums which the latter should become obligated to pay by reason of the liability imposed by law because of injury to or destruction of property caused by accident, is clear. The exclusion is expressed in a most unfortunate manner. It refers to a claim arising "by reason of any motor vehicle, required by law to have a license, which is owned by the Insured". Here, as found by the Court of Appeal, Anstey was negligent in allowing the gasoline to spill out on the surface of the area, in failing to remain in control of the spring faucet and in failing to use consummate care in handling the gasoline. It was shown by the evidence that before opening the faucet he failed to ascertain by the use of a dip-stick the quantity of gasoline already in the tank, and it was his failure to do this which apparently led him to think that he could leave the spring faucet held open by a piece of wood and go into the service station to discuss business with Riddell. This act of negligence was one of the causes of the accident: the breach of *The Gasoline Handling Act* was another.

The liability for this negligent act appears to me to fall squarely within the insuring clause in the endorsement and not to be excluded by exclusion 3, which is an exception from liability and is to be construed in the sense in which the insured person might reasonably understand it: *Life Association of Scotland v. Foster et al.* (1). In *Provincial Insurance Company, Limited v. Morgan et al.* (2), Lord Russell of Killowen said that the printed forms which insurance companies offer for acceptance to the insuring public should state in clear and unambiguous terms the events upon which the insuring company will escape liability under the policy, and that these exceptions should be expressed in words which do not admit of doubt. It would, in my opinion, be giving a strained and quite unwarranted construction to the words "any claim arising by reason of any motor vehicle" as including negligent acts such as

(1) (1873), 11 M. (Ct. of Sess.) 351 at 371.

(2) [1933] A.C. 240 at 250.

failing to ascertain the amount of gasoline in the tank in advance of opening the faucet and in failing otherwise to exercise the requisite degree of care, as found by Roach J.A.

In view of the conclusion of the Court of Appeal that the risk was not insured by reason of exclusion 3, the question as to whether any of the claims were affected by the provision of the endorsement excluding claims for destruction of property leased to the insured was not considered. The learned trial judge was of the view that this should be construed as referring only to property occupied by or under the control of the insured and that, as the service station had been sublet to Riddell, this did not apply. I am unable, with great respect, to agree with this. The claim of Gardiner which was compromised for a total payment of $7,112.50 was for the damage caused to the property leased to the Reliance company for a term of 5 years from November 1, 1950, and the fact that it was thereafter sublet to Riddell does not, in my opinion, affect the matter. The language of the endorsement appears to me to be clear and unambiguous.

I would allow the appeal of the Reliance company as against Canadian General Insurance Company and direct that judgment be entered for the amounts found payable at the trial in respect of the claims other than that of Gardiner, with costs throughout against that company. I would dismiss the appeal of Lloyds with costs.

CARTWRIGHT J.:—The nature of these appeals and the facts relevant to their determination are set out in the reasons of my brother Locke. I agree with the conclusion, which has been reached in the first appeal by my brother Locke, the Court of Appeal and the learned trial judge, that the liability imposed by law upon Reliance Petroleum Limited for the losses sustained by the seven persons set out in para. 5 of the statement of claim arose from the use of the insured tank truck, and I do not find it necessary to decide whether it arose also from its operation. I agree that the appeal must be dismissed with costs.

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STEVENSON v. RELIANCE PETROLEUM LIMITED — RELIANCE PETROLEUM LIMITED v. CANADIAN GENERAL INSURANCE COMPANY

Cartwright J.

In the appeal of Reliance Petroleum Limited against Canadian General Insurance Company I find it necessary to consider only one of the defences raised, *i.e.*, that the appellant's claim is excluded by the terms of exclusion 3 contained in the policy.

The relevant words of the policy setting out the respondent's agreement to pay are as follows:—

> . . . the Insurer . . . subject to the Statements, Exclusions and Special Conditions of the policy . . . agrees with the Insured . . .
>
> To PAY on behalf of the Insured all sums which the Insured shall become obligated to pay by reason of the liability imposed upon the Insured by law . . . for damages because of injury to or destruction of property caused by accident occurring within the Policy Period and while this Endorsement is in force.

The words relied upon as excluding the appellant's claim are as follows:—

> This Policy shall have no application with respect to and shall not extend to nor cover any claim arising or existing by reason of any . . . motor vehicle . . . owned . . . by the Insured.

I have already indicated my agreement with the unanimous opinion in the Courts below that the liability of the appellant for which it claims indemnity under the policy arose from the use of the tank truck owned by it. The tank truck is a motor vehicle. But for the fact that contrary opinions have been expressed in this case I would have thought it clear that the words "any claim arising or existing by reason of any motor vehicle" in their ordinary sense include a claim arising from the negligent use of a motor vehicle. Indeed the words quoted seem to me to be at least as comprehensive as those of the insuring agreement in the standard form of owner's policy, "arising from the ownership, use or operation of the automobile". I do not think that in ordinary speech it would be said that a claim arising from the ownership or from the use or from the operation of a motor vehicle did not arise or exist by reason of a motor vehicle. So to hold would, I think, render the clause meaningless, and it is a fundamental rule that in construing an instrument effect must as far as possible be given to every clause.

The rule expressed in the maxim, *verba fortius accipiuntur contra proferentem,* was pressed upon us in argument, but resort is to be had to this rule only when all other rules of construction fail to enable the Court of construction to ascertain the meaning of a document.

It was suggested that one of the grounds on which Reliance Petroleum Limited was found liable for the damages caused was the negligent failure of its employee to measure the depth of gasoline in the tank before commencing delivery and that a claim resulting from such negligence does not fall within the words of exclusion quoted above. As to this I agree with the view expressed by my brother Rand that this omission and the omission to remain at the truck during the discharge of gasoline were merely circumstances annexed to the delivery. They were the circumstances which rendered the use made of the tank truck a negligent one.

A motor vehicle was the instrument by the negligent use of which the damages were inflicted and in my opinion the claims for those damages arose by reason of the motor vehicle.

As already mentioned, the conclusion at which I have arrived as to the construction of the exclusion makes it unnecessary for me to consider the other grounds submitted by Mr. Wilson in support of the judgment of the Court of Appeal.

I would dismiss the appeal with costs.

Appeals dismissed with costs, LOCKE J. *dissenting in part.*

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