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Commercial Law: Insurance

J. Denson Smith

in any respect participate in the violation of this Chapter, may . . . [have] the said property . . . released by the collector and delivered to him. . . ."

The majority on rehearing construed this language just quoted to refer to and embrace the types of vehicles mentioned in Section 863 which are used to transport untaxed goods, as well as the goods themselves, mentioned in Section 865. Justice Hawthorne in his dissenting opinion expressed the view that the provisions of Section 866 applied only to the contraband goods themselves, seizure of which is authorized by the next preceding section, and did not refer back to Section 863. Justice Moise did not express himself on the point, though voting to sustain the forfeiture.

The question is not free from doubt and while neither the majority nor the dissent make a completely persuasive case, it is suggested that the result may be sustained on the general theory that penal and forfeiture provisions are to be strictly construed.

Commercial Law

INSURANCE

*J. Denson Smith**

It seems clear that our ideas about insurance and its importance as an instrumentality of considerable social consequence for protecting the individual against personal loss have expanded a great deal over the past thirty years. That many years ago when an automobile tipped over and its side struck the road violently, the accident was held not to constitute a "collision." In January of this year when the right rear dual wheels of a dump truck came off while being driven and the rear portion of the body struck the roadway violently, the accident was held to constitute a "collision." Justices LeBlanc and Hamiter disagreed. Perhaps insurers may not try to do anything about it, but if they feel so inclined, they can pursue the will-o'-the-wisp beckoning in the suggestion, "if [the insurer] had desired to circumscribe its liability to certain specified types of collisions, it could have spelled out such restrictive coverage

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in its policy."[1] The earlier case, although not overruled, was frowned upon, and not covertly. The court observed that there was no provision covering "upset" in the earlier policy, yet it did not, for obvious reasons, find an "upset" within the coverage of the instant policy. Did the court mean to suggest that if the present policy had not covered an "upset" the accident here would not have been a "collision"? If what happened here was a "collision" then it would seem that the "upset" coverage would become meaningless. The case was *Albritton v. Fireman's Fund Ins. Co.*[2]

The plaintiff in *Lloyd v. Unity Life Ins. Co.*[3] relied on a claimed ambiguity to recover under two policies covering death by accidental means. The insured had been killed by another who had pleaded guilty to manslaughter. The court found that this constituted homicide within an exclusion in the policy excepting death resulting directly or indirectly from "homicide."

The case of *Mouton v. Motors Ins. Corp.*[4] established the proposition that where an insurer in an effort to cause needed repairs to be made to the insured automobile falls down so completely in the undertaking that major repairs are yet necessary, the insured is not required to return the car for further repairs but may recover the cost thereof. The principle involves, of course, a matter of degree. It will not control where only minor adjustments are needed. Practically considered, the ruling may work a hardship on the insurer who would perhaps be in a position to require the original repairer to do the corrective work either under the original contract or at a minimum additional cost. On the other hand, it does give better protection to the insured and constitutes a sound warning to insurers not to treat too lightly their undertaking to make repairs in cases of this kind.

In *Guin v. Commercial Cas. Ins. Co.*[5] the court sustained the validity of a clause limiting the liability of the insurer in an automobile fire policy in the event the insured carried other insurance against the same loss. It rejected the insurer's contention that the hazard was increased by the additional insurance, in view of the fact that the insured would be entitled to recover only once. Its allowance of attorney's fees against one of the

1. Albritton v. Fireman's Fund Ins. Co., 24 La. 522, 529, 70 So.2d 111, 113 (1953).
2. 224 La. 522, 70 So.2d 111 (1953).
3. 225 La. 585, 73 So.2d 470 (1954).
4. 224 La. 879, 71 So.2d 313 (1954).
5. 224 La. 44, 68 So.2d 752 (1953).

insurers drew a dissent by two of the Justices who felt that a good faith effort had been made to settle the claim. The case will warn any insurer not to urge arson as a defense and then make no effort to prove it.

In *LeBreton v. Penn Mut. Life Ins. Co.*,[6] an insured, a naval reserve officer, while on an authorized flight as part of his cross-country training, was killed when the plane crashed. The claimant's effort to establish that the deceased was not at the time a "member of the crew" so as to avoid the application of a provision limiting coverage, was found without merit by the court in a well-reasoned opinion.

NEGOTIABLE INSTRUMENTS

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Fidelity National Bank of Baton Rouge v. Vuci[1] was an important decision clarifying the legal remedy available to an endorsee bank which cashes a check for a customer who has taken the check under a forged or unauthorized endorsement. Six checks drawn on out-of-state banks were remitted by the drawers to the payee in settlement of various invoices. An employee of the payee forged the payee's endorsement and, without authority, cashed the checks with the defendant, a bookmaker. The proceeds were lost in gambling at defendant's establishment and no portion was received by the payee. The defendant endorsed each check, presented the same to the plaintiff bank and the bank paid the sum represented by the checks to the defendant. The plaintiff bank was in good faith and knew nothing of the circumstances that resulted in defendant's lack of title. Under the usual guaranty of all prior endorsements, the checks were duly forwarded to the six out-of-state drawee banks which, upon presentation, paid the items and debited the account of the drawers. When the forgery was discovered, each of the six drawee banks made demand upon plaintiff bank for reimbursement under the guaranty of prior endorsements. The plaintiff bank did not reimburse the drawee banks, but the checks were relinquished to the plaintiff for the purpose of supporting the bank's action against the defendant for recovery of the proceeds. The court sustained the plaintiff bank's action on the theory of

6. 223 La. 984, 67 So.2d 565 (1953).

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1. 224 La. 124, 68 So.2d 781 (1953).