LUMBERMENS MUTUAL CASUALTY COMPANY (*Defendant*) ..... APPELLANT;

AND

HARRY STONE (*Plaintiff*) ..... RESPONDENT.

1955
*Mar. 8
*Jun. 28

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Insurance—Automobile—Registered letter cancelling policy sent by insurer—Letter not received by insured—Letter returned to insurer—Whether policy effectively cancelled.

Condition 13(2) of an automobile insurance policy provided that "This policy may be cancelled by the Insurer giving fifteen days' notice in writing by registered mail, or five days' notice personally delivered, and refunding the excess of paid premium . . . Such repayment shall accompany the notice, and in such case, the fifteen days shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed". Condition 15 pro-

*PRESENT: Taschereau, Rand, Kellock, Cartwright and Fauteux JJ.

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vided that "Written notice may be given to the insured by letter personally delivered to him or by registered letter addressed to him at his last post office address, notified to the Insurer . . .".

The respondent took action in warranty against his insurer, the appellant, following a collision involving his automobile. The appellant denied liability on the ground that it had cancelled the policy by sending to the respondent by registered mail a 15-day notice in writing of cancellation. A cheque representing the correct refund due to the respondent was enclosed with the notice. The evidence disclosed that the letter was properly addressed to the respondent, that it was never received by him or delivered to his address, and that it was eventually returned to the appellant who filed it unopened. No other action was taken by the appellant up to the time of the claim. The trial judge held that the policy was cancelled, but this judgment was reversed by the Court of Appeal.

Held Cartwright J. (dissenting): That the appeal should be allowed as the policy was effectively cancelled.

The conditions in the policy were unequivocal in providing for both the delivery of notice personally or by means of registered post. The risk of actual delivery by the post after the letter reached destination was placed upon the insured.

Per Cartwright J. (dissenting): The receipt of the letter at the postal station was not a receipt "at the post office to which it was addressed", since it was not addressed to such post office. It was addressed to a street number where it was not received.

APPEAL from the judgment of the Court of Queen's Bench, appeal side, province of Quebec (1), reversing the decision of the trial judge and holding that an insurance policy had been effectively cancelled by the insurer.

J. F. Chisholm, Q.C. and *L. P. de Grandpré, Q.C.* for the appellant.

R. Spector for the respondent.

The judgment of Taschereau, Rand and Fauteux JJ. was delivered by:—

RAND J.:—The narrow issue here is whether, under its terms, an insurance policy could be cancelled by a notice sent by registered mail to the insured at the address given in the policy where it did not in fact reach the insured. The relevant clauses are these:—

13. (2) This policy may be cancelled at any time by the Insurer giving to the Insured fifteen days' notice in writing of cancellation by registered mail, or five days' notice of cancellation personally delivered, and refunding the excess of paid premium beyond the pro rata premium for the expired time. Repayment of excess premiums may be made by money, post office order, postal note or cheque. Such repayment shall accompany

(1) Q.R. [1954] Q.B. 306.

the notice, and in such case, the fifteen days above mentioned shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed.

15. Any written notice to the Insurer may be delivered at or sent by registered post to the chief agency or head office of the Insurer in this Province. Written notice may be given to the Insured by letter personally delivered to him or by registered letter, addressed to him at his last post office address, notified to the Insurer, or, where no address is notified and the address is not known, addressed to him at the post office of the agency, if any, from which the application was received.

It is not disputed that ordinarily a notice terminating a contract must be brought home to the other contracting party and the only inquiry here is as to the sufficiency of the clauses quoted to furnish a means short of that.

The specification that the notice will take effect fifteen days after the arrival of the letter at destination is, as Smith J. at the trial held, the determining consideration. It was contended that this clause is not applicable to metropolitan centres with sub-post offices and street deliveries from them: but that is a gloss with no support in the policy. The Court of Queen's Bench (1), in effect, found a condition that the notice would be ineffectual unless received, but even in that situation the question remains, when would it become effective? Casey J. takes the fifteen days to run from the actual receipt; but what warrant in the language used is there for that?

On any interpretation requiring an actual receipt of the notice, and giving effect to the plain meaning of that clause, hardship might be entailed to the insured. If, because of absence of the insured, delivery was made, say, on the 14th day after the arrival or if the absence continued for more than fifteen days, the same exposure to prejudice would take place. These situations could be avoided only by writing the clause off as meaningless or by adding some such condition as that the letter must be actually received by the insured in the ordinary course of mail.

The reluctance of courts to give other than the strictest interpretation to such terms arises from the fact that a failure of actual notice misleads the insurer; he relies upon the continuance of the contract. But insurance has become a vast business, and in relation to automobile operations the complexities of the risk, dependent so often on the personal habits and character of the insured, which, under a practice

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beneficial to the insured, are ascertainable only after the policy has issued, cancellation has become something more than an infrequent and unimportant feature.

The company, as well as the insured, is seen, thus, to have a substantial interest in this provision. The latter could, by being absent from his place of abode, compel the maintenance of a risk which the insurer seeks to end; and it is to meet such a situation that the clause is provided. I am unable to agree that it is to be construed as meaningless or that any such condition as suggested can be implied; and its language, to the ordinary person, is as clear as the company can reasonably be called upon to make it.

The case of *London and Lancashire Fire Insurance Company* v. *Veltre* (1), was relied upon as governing the interpretation, but there the substantive clause was quite different. It provided:—

> The insurance may be terminated by the company by giving seven days' notice to that effect . . . and the policy shall cease after such notice or notice and tender, as the case may be, and the expiration of the seven days.

This was held not to be qualified by a clause dealing generally with the means of giving notice which included that by registered mail.

The substantive clause in the case before us is unequivocal in providing for both the delivery of notice personally or by means of registered post. "Personally" means as to the insured, not as by the insurer, and the last sentence of the clause I have already considered. In *Clapp* v. *Travellers' Indemnity Company* (2), on language indistinguishable, the Court of Appeal for Ontario held the notice effective though not in fact received. In the view of Riddell J.A., the clause places the risk of actual delivery by the post after the letter reaches destination upon the insured, and with this construction I am compelled to agree.

I would, therefore, allow the appeal and dismiss the action. In the circumstances, including the fact that leave to appeal was given on the ground that the question raised was one of importance to insurance companies generally, there will be no costs in this Court or in the Court of Queen's Bench.

(1) (1917-18) 56 Can. S.C.R. 588. (2) [1932] 1 D.L.R. 551.

KELLOCK J.:—The question for decision in this appeal arises upon the true construction of two of the "standard conditions" of the policy in question. The appellants contend that the notice of cancellation, dated the 19th of September, 1946, sent on the following day by registered mail to the respondent at "5481 Queen Mary Road, Montreal, Quebec", the address stated in the policy, was effective to cancel the policy at the expiration of fifteen days from the date of arrival of the letter at the post office in Montreal, which, at the latest, was September 23, 1946. Included in the letter was a cheque for the refund of the appropriate portion of the premium which had been paid in advance.

Two attempts were made by the postal authorities in Montreal to deliver the letter at the address stated, which was in fact the address at which the respondent was residing at the time, but delivery could not be effected owing to the absence of any person on the premises on either occasion. Evidence was given by the letter-carrier that he had left on the premises the usual card notifying the respondent that the letter was being held for him at the post office. Not having been called for (the respondent testified that the card had not been received) the letter was ultimately returned by the post office in Montreal to the appellants at Toronto.

It was held by the Superior Court that the policy was effectively cancelled, but this judgment was reversed by the Court of Queen's Bench, Appeal Side (1).

The conditions in question are as follows:—

CANCELLATION.

13. (2) This policy may be cancelled at any time by the Insurer giving to the Insured fifteen days' notice in writing of cancellation by registered mail, or five days' notice of cancellation personally delivered, and refunding the excess of paid premium beyond the pro rata premium for the expired time. Repayment of excess premiums may be made by money, post office order, postal note or cheque. Such repayment shall accompany the notice, and in such case, the fifteen days above mentioned shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed.

NOTICE.

15. Any written notice to the Insurer may be delivered at or sent by registered post to the chief agency or head office of the Insurer in this Province. Written notice may be given to the Insured by letter personally delivered to him or by registered letter addressed to him at his

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last post office address, notified to the Insurer, or, where no address is notified and the address is not known, addressed to him at the post office of the agency, if any, from which the application was received.

It is properly admitted by counsel for the respondent that the letter was

addressed to him (the respondent) at his last post office address, notified to the Insurer,

in accordance with condition 15. Condition 13(2) was accordingly complied with, the letter "giving to the Insured fifteen days' notice in writing of cancellation by registered mail". As the letter contained the cheque for the excess premium, as required by the second and third sentences of that paragraph, the remaining question is whether the language of the last sentence of condition 13, which provides for the commencement of the running of the fifteen days from the day following the "receipt" of the registered letter "at the post office to which it is addressed", is satisfied.

It is contended on behalf of the respondent that no letter which bears the street address of premises in any place in Canada where the post office provides delivery of mail by letter-carrier can come within the requirements of the paragraph, in that such a letter is not addressed to a "post office" as would be the case if the letter had, for example, simply borne the word "Montreal". It is further contended that, if effect cannot be given to this contention, the words "post office" in condition 13 must be read as the "last post office address, notified to the Insurer", which are the words actually used on condition 15.

I find it impossible to give effect to either contention. As condition 15 requires that any notice given to the insured otherwise than personally, must be by registered letter "addressed to him at his last post office address, notified to the Insurer", to give effect to the first contention would be to render it impossible for an insurer to give notice by mail to a policy-holder in any city or town throughout the country where delivery by letter-carrier is provided by the post office authorities, in which communities, no doubt, the bulk of policy-holders reside. Such a construction, in my view, would completely stultify the conditions, and would be contrary to all ordinary canons of construction. With respect to the second contention, it is sufficient to say that it requires the substitution in condition 13 of language which it does not contain.

What, after all, it may be asked, is meant by "addressing" a letter but directing the government department which operates the postal service to carry the letter and deliver it through the agency of the department at the place of destination, i.e., the "post office" at that point, to the person whose name and other means of identification, if any, the letter bears. Whether the post office undertakes to endeavour to find the person indicated or leaves the latter to call for his mail, is entirely a matter for the "post office". This, in my view, is exactly the situation which the policy conditions contemplate and for which they provide. The risk of the mails is entirely laid upon the insured.

Reliance was placed on behalf of the respondent, as well as in the judgments in the Court of Appeal, upon the decision of this court in *London and Lancashire Fire Insurance Company* v. *Veltre* (1). The statutory conditions there in question, however, lacked any provision for the commencement of the running of the fifteen days, and, in my opinion, that judgment, therefore, has no application.

It was also contended for the respondent that the provision for the repayment of the excess premium contained in condition 13 means that the insurer must establish actual receipt of such refund by the insured. In my view, acceptance of any such contention would again reduce the provisions of the policy to nonsense, a result not to be arrived at if they are capable of any other reasonable construction. If, on the proper construction of this condition, the notice is "given to the Insured" by such a letter as that here in question, as in my opinion it is, the repayment which the condition expressly provides "shall accompany" the notice is equally made for the purposes of the condition by compliance with that requirement.

I would therefore allow the appeal and restore the judgment of the learned trial judge, but in the circumstances without costs.

CARTWRIGHT J. (dissenting):—The relevant facts of this case are undisputed. The appellant issued an automobile policy in its usual form to the respondent insuring him against third-party liability and other risks, in connection with an automobile owned by him, for the period of one

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year commencing February 19, 1945. The policy was renewed for the period of a further year, ending February 19, 1947.

The question to be determined is whether the policy was in force on January 14, 1947, when the automobile therein described was involved in a collision, or had been effectively cancelled by the appellant prior to that date.

The policy contained the following conditions which are not "statutory conditions" but are said to be included in all automobile policies issued by the appellant:—

13. (2) This policy may be cancelled at any time by the Insurer giving to the Insured fifteen days' notice in writing of cancellation by registered mail, or five days' notice of cancellation personally delivered, and refunding the excess of paid premium beyond the pro rata premium for the expired time. Repayment of excess premiums may be made by money, post office order, postal note or cheque. Such repayment shall accompany the notice, and in such case, the fifteen days above mentioned shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed.

15. Any written notice to the Insurer may be delivered at or sent by registered post to the chief agency or head office of the Insurer in this Province. Written notice may be given to the Insured by letter personally delivered to him or by registered letter, addressed to him at his last post office address, notified to the Insurer, or, where no address is notified and the address is not known, addressed to him at the post office of the agency, if any, from which the application was received.

On September 19, 1946, the appellant sent, by registered mail, a notice of cancellation in proper form addressed to the insured as follows:—

Mr. Harry Stone,
5481 Queen Mary Road,
Montreal, Quebec.

This was the address of the respondent contained in the application for the policy and set out in the policy. No other "post office address" was at any time notified to the Insurer. It was therefore the address to which a notice to the Insured was required to be addressed by the terms of Condition 15.

With this notice the appellant enclosed a cheque payable to the insured for $7.84, which is conceded to be the correct amount required to be refunded to the insured under the provisions of Condition 13 (2), quoted above.

This registered letter was never received by the insured nor was it delivered at 5481 Queen Mary Road. The evidence supports the finding of fact that the letter reached

Notre Dame de Grace postal station and in Montreal not later than September 23, 1946. It was returned to the appellant by the postal authorities as "undelivered" and received by it early in October, 1946. It was thereafter retained in the files of the appellant in Toronto, unopened.

No doubt, apart from statutory provisions, if the parties to a contract of insurance for a definite term, the premium for which is paid in advance, choose to do so they may agree that the insurer may cancel the policy and leave the insured without protection although neither the notice of cancellation nor the unearned premium to which he is entitled are received by him and he remains, to the knowledge of the insurer, in ignorance of the fact that the policy has ceased to be in force. But conditions in the contract having such an effect must be exactly complied with by the insurer if it seeks to take advantage of them. If such conditions are ambiguous they will not be construed in favour of the insurer whose words they are. This follows from s. 1019 of the *Civil Code,* which gives statutory force to the maxim *verba chartarum fortius accipiuntur contra proferentem.*

In the circumstances set out above, can it be said that the notice was received "at the post office to which it was addressed"? The contention of the appellant, which found favour with the learned trial judge, is that the receipt of the letter at the Notre Dame de Grace Postal station was receipt at the post office to which it was addressed; but the simple answer to this appears to me to be that the letter was not addressed to such post office. No doubt, as counsel for the appellant argued, a majority of the letters mailed in Canada are no longer addressed to addressees at post offices to which they go from time to time to call for their mail but are addressed to the street numbers of the addressees and delivered there by the postal authorities; but this fact does not appear to me to furnish a sufficient reason for reading into Condition 13 (2) words which are not there. The construction for which the appellant contends requires the insertion in the condition of some such words as those which I have italicized in the following sentence:—"the fifteen days above mentioned shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed *or if it is not addressed to a post office then from the day*

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following its receipt at the post office or postal station at which in the ordinary course of the business of the postal authorities it would be received for the purpose of being given to a carrier for delivery to the street address to which it is addressed."

I am unable to so construe the condition; and, in my view, the notice of cancellation to the insured was at no time "received at the post office to which it was addressed" within the meaning of the words of Condition 13 (2).

The judgment of the Court of Appeal for Ontario in *Clapp* v. *Travellers Indemnity Company* (1), relied on by the appellant, is distinguishable on the facts. In that case the notice of cancellation was addressed to the insured, Justine Barker, as follows:—

> Justine Barker,
> 401 Langlois Ave.,
> Windsor, Ont.

and was in fact delivered at 401 Langlois Ave. and received and signed for there by the wife of the insured. It was therefore received at the very address to which it was directed. It may be that a notice so received would be effective under the wording of Condition 13 (2) although not received by the insured personally; but it is not necessary to express an opinion on this point as, in the case at bar, the notice was not received at the address of the insured but was returned undelivered to the insurer.

As I have concluded that the notice was not effectively given within the terms of the Condition as properly construed, it is unnecessary to consider the further argument of counsel for the respondent that, even if in certain circumstances notice by registered mail may be effectively given although it does not actually reach the insured, there is an obligation on the insurer in cases where there is excess premium to be refunded to see that the amount repayable actually reaches the insured. It may, however, be observed that in the *Clapp case* this question did not arise as the policy in that case was cancelled for non-payment of the premium.

Another construction suggested was that reading Conditions 13 (2) and 15 together the concluding words of the former should be construed as meaning "the fifteen days

(1) [1932] O.R. 116.

above mentioned shall commence to run from the day following the receipt of the registered letter at the post office address of the insured as determined by Condition 15." Such a construction would support the decision in the *Clapp case* but in the case at bar it would not assist the appellant as the letter was never received at such address.

For the above reasons I agree with the conclusion arrived at by the Court of Queen's Bench and would dismiss the appeal with costs.

Appeal allowed without costs.

Solicitors for the appellant: *Tansey, de Grandpré & de Grandpré.*

Solicitor for the respondent: *Reuben Spector.*