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 \*Jun. 10  
 \*Jun. 28

CONTINENTAL CASUALTY COM- }  
 PANY (*Defendant*) ..... } APPELLANT;

AND

THEODORE ROBERGE (*Plaintiff*) ..... RESPONDENT.

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

*Insurance—Sickness—Total disability—Whether insured confined to his house.*

The respondent sought to recover under a contract of accident and sickness insurance on the ground that during the period in question he was totally incapacitated and was "nécessairement, strictement et continuement retenu dans la maison", within Clause A of Part 4 of his policy. The evidence disclosed that he was totally incapacitated during that time and that, although confined to the house, he made numerous visits to his doctor on the occasion of which he also visited each time the offices of his insurance company; that he went out each day for a short walk; that he was able to drive his car, although he did not do so in fact; that he regularly visited a store nearby and called at least once at the office of his lawyer. Both the trial judge and the majority in the Court of Appeal held that he was entitled to the benefit of the clause.

*Held:* The appeal should be allowed. The words "nécessairement, strictement et continuement retenu dans la maison" in the clause must be given the natural, ordinary meaning which they bear in relation to the context, and on the facts established the respondent was not entitled to recover under that clause. Otherwise, Clause B of Part 4, dealing with the case when the insured is not confined to the house, would be meaningless and inoperative.

APPEAL from the judgment of the Court of Queen's Bench, appeal side, province of Quebec (1), affirming, Casey J.A. dissenting, the judgment at trial.

*A. Tourigny, Q.C.* and *L. P. de Grandpré, Q.C.* for the appellant.

*A. Sabourin, Q.C.* for the respondent.

The judgment of the Court was delivered by:—

ABBOTT J.:—This appeal involves the interpretation of a contract of accident and sickness insurance issued by appellant in favour of respondent.

\*PRESENT: Taschereau, Rand, Kellock, Fauteux and Abbott JJ.

(1) Q.R. [1954] Q.B. 607.

The facts are not disputed and it is common ground that if the respondent was confined to his house, within the meaning of Clause A of Part 4 of the policy contract, the appeal should fail and that, if he were not so confined, the appeal should be maintained and the respondent's action dismissed.

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The relevant clauses of the policy read as follows:—

PARTIE 4. PERTE DE TEMPS PAR MALADIE

A. INCAPACITE TOTALE LA VIE DURANT AVEC SEJOUR FORCE A LA MAISON. Lorsqu'une maladie rend l'assuré absolument, nécessairement et continuellement incapable et l'empêche de vaquer à toute occupation ou emploi, et durant lequel temps l'assuré est sous les soins et régulièrement visité par un médecin, chirurgien ou ostéopathe qualifié, autre que lui-même, l'assureur paiera l'indemnité mensuelle contre les maladies pour la période que l'assuré sera ainsi incapable, et durant laquelle il sera aussi en raison de la dite maladie *nécessairement, strictement et continuellement retenu dans la maison.*

\$100 (Par Mois) B. INCAPACITE TOTALE SANS SEJOUR FORCE A LA MAISON. Lorsqu'une maladie rend l'assuré absolument, nécessairement et continuellement incapable et l'empêche de vaquer à toute occupation ou emploi, et durant lequel temps l'assuré reçoit les soins et services d'un médecin, chirurgien ou ostéopathe qualifié, autre que lui-même, l'assureur paiera l'indemnité mensuelle contre les maladies pour la période que l'assuré sera ainsi incapable, telle période ne dépassant pas un mois, *quoique non retenu dans la maison.*

The italics are mine.

It is conceded that during the period for which indemnity of \$100 per month is claimed, the respondent, as a result of a throat affliction was totally incapacitated within the meaning of the policy. He was confined to his house most of the time but it is also common ground that during the period in question he made numerous visits to Montreal to see his doctor and on the occasion of each of these visits also went to the offices of the Insurance Company appellant. In addition to these trips to Montreal, respondent went out of his house each day for a short walk, was able to drive his car, although there is no evidence that he did in fact do so, regularly visited a store nearby, and on at least one occasion called at the office of his lawyer. On these facts the learned

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trial judge and a majority of the Court of Queen's Bench (1) held that respondent during the period in question was "nécessairement, strictement et continuement retenu dans la maison" as provided in Clause A of Part 4 of the contract.

Had the respondent left his house for the sole purpose of receiving medical treatment which might only be obtainable elsewhere, it is perhaps not unreasonable that a condition such as that contained in the clause in question should be broadly interpreted so as to permit such visits. A provision substantially identical to the one in issue in this appeal was so interpreted by Campbell J. in *Mitchell v. Occidental Life* (2), but it is significant that the learned judge, p. 343, described visits of this kind as "exceptional and temporary absences from the house, especially when ordered or recommended by the attending physician."

A similar question arose in the case of *Guay v. Provident Accident and Guarantee Co.* (3), decided by the Court of Review. In that case the insured was totally incapacitated and for a week was confined to the house except for visits to his doctor's office. During a subsequent six weeks' period he took exercise in the open air and visited the office of another doctor for a minor operation not related to his incapacity. The policy called for payment of \$25 per week while the insured was necessarily confined to the house and of \$12.50 per week while he continued to be incapacitated although not necessarily to the extent of confining him to the house. He was held entitled to recover the full rate of \$25 for the week during which he was confined to the house except for visits to his doctor and \$12.50 per week for the subsequent six weeks' period.

I find it unnecessary to determine in this case whether visits by respondent to his doctor for the sole purpose of obtaining medical treatment could be brought within the terms of Clause A of Part 4 since it is clear on the evidence that respondent was permitted a very considerable freedom of movement by his physician and did in fact leave his home daily.

The words "nécessairement, strictement et continuement retenu dans la maison" in the clause in question must be given the natural, ordinary meaning which they bear in relation to the context in which they stand and I am unable

(1) Q.R. [1954] Q.B. 607.

(2) Q.R. [1948] S.C. 340.

(3) Q.R. (1917) 51 S.C. 328.

to agree with the conclusion reached by the Courts below that on the facts established in this case the respondent was entitled to recover under Clause A of Part 4 of the policy. As Mr. Justice Casey has pointed out in his dissenting judgment, to do so would render meaningless and inoperative Clause B of Part 4 of the policy.

The appeal should be maintained and the action and incidental demand of the respondent dismissed, with costs throughout.

*Appeal allowed with costs.*

Solicitor for the appellant: *A. Tourigny.*

Solicitors for the respondent: *Sabourin & Sabourin.*

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