THE CANADIAN SURETY COMPANY (DEFENDANT)..... } APPELLANT;

AND

QUEBEC INSURANCE AGENCIES LIMITED (PLAINTIFF)..... } RESPONDENT.

1936
* Mar. 2.
* Apr. 28.

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

Surety—Insurance—Surety company—Warranty—Bond—Pecuniary losses to employer through acts of employee—"Larceny or embezzlement"—Whether to be construed in their technical or popular sense—Whether contract a suretyship or insurance—Arts. 1919, 1935 C.C.

Upon a bond, commonly called a surety bond, subscribed by the appellant in favour of the respondent for pecuniary losses through acts of larceny or embezzlement on the part of respondent's employee, although it was not proven that the latter had been guilty of these offences construed in the strict sense of these words, *held,* Davis J. dissenting, that, as a result of the circumstances of this case and in view of its context, the terms of the bond were sufficient to cover the cases of fraud and dishonesty committed by the appellant's employee.

When the insurer bound himself to pay the insured (employer) such "pecuniary losses * * * as (the insured) shall have sustained of money or other personal property * * * by any act or acts *of larceny or embezzlement on the part of*" (an employee), it is sufficient to find these acts to have been fraudulent or dishonest and such indeed as to amount to embezzlement, if not in the technical sense, at least in the non-technical or popular sense, of the word. The word "embezzlement" should not be construed in the same way and with the same specific meaning as it would be construed when used in an indictment under the criminal law. Davis J. dissenting.

Such class of bond is not in effect, as commonly known, a surety bond: it partakes more of the nature of an insurance policy than of the nature of a suretyship (art. 1929 C.C.). Therefore, art. 1935 C.C. which enacts that "suretyship * * * cannot be extended beyond the limits within which it is contracted" has no application to such a bond, which, by its real character, is a commercial contract to which should be given a liberal interpretation. Davis J. dissenting.

Per Davis J. (dissenting)—Upon a proper interpretation of the language of the policy, the words "larceny and embezzlement" should be given their technical and strict meaning. The meaning of technical terms in a contract of suretyship ought not to be extended beyond what is the strict meaning of the words.

Judgment appealed from (Q.R. 59 K.B. 295) affirmed, Davis J. dissenting.

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), affirming the

* PRESENT:—Rinfret, Cannon, Crocket, Davis and Kerwin JJ.

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judgment of the Superior Court, Philippe Demers J. and maintaining the respondent's action upon a bond issued by the appellant against pecuniary losses by act of larceny or embezzlement on the part of respondent's employee.

The material facts of the case and the questions at issue are stated in the above head-note and in the judgments now reported.

W. F. Chipman K.C. for the appellant.

C. A. Hale K.C. for the respondent.

The judgment of the majority of the Court (Rinfret, Cannon, Crocket and Kerwin JJ.) was delivered by

RINFRET J.—This action was instituted in the province of Quebec upon a bond called a surety bond, issued by the appellant, The Canadian Surety Company, in favour of the respondent, the Quebec Insurance Agencies Limited, against the

pecuniary losses, not exceeding five thousand dollars, as said (Quebec Insurance Agencies Limited) shall have sustained of money or other personal property * * * by any act or acts of larceny or embezzlement on the part of the (Independent Insurance Agencies Limited), directly or through connivance with others while in any position or at location in the employ of the (Quebec Insurance Agencies Limited).

In the bond, the Quebec Insurance Agencies Limited is styled the Employer and the Independent Insurance Agencies Limited is styled the Employee. For the sake of brevity, we will hereafter refer to them by these names.

The bond was made and signed on May 3, 1928, in Montreal, and is admittedly governed by the laws of the province of Quebec.

The relations of the Employer and Employee were as follows:

The Employer did the business of an insurance agent and as such represented several insurance companies. The Employee was in the same business and acted as general agent for the Employer; but, in addition, it represented other insurance agents.

The Employee was authorized to issue insurance policies for and on behalf of the Employer. It was supposed to make daily reports to the Employer of the insurance policies underwritten on its behalf; and the method adopted for that purpose was for the Employee to send to the

Employer copies of the policies issued during the day. At the end of each month, the Employer prepared a monthly account of the total amount of premiums due in respect of all the policies issued during that month, less the commission earned by the Employee as a result of the issuance of these policies; and such account represented the amount for which the Employee was indebted to the Employer. The Employee was understood to be liable for the amount so shewn in the monthly accounts, whether the premiums had been actually collected by it or not; and the Employer would look to the Employee as its debtor for the balance shown in the monthly account. The Employer was not advised of the payments of the premiums by the insured people and, in fact, was not, in any way, concerned with the question whether these premiums were paid or were not paid. No remittance of a particular premium for a particular policy was ever made or supposed to be made by the Employee to the Employer. There was kept a running account of the transactions between the two; and an accounting was done *en bloc* for the lump sum due at the end of each month.

The regular practice was that the Employee, after receiving the monthly account, was allowed a further sixty days to pay to the Employer the balance shown in the account.

Up to the month of August, 1929, matters went on satisfactorily; and there were apparently no arrears in the payments made by the Employee to the Employer.

After that month, however, payments began to slow up and so continued through the fall of 1929 and the early part of 1930.

On January 28 of that year, the Employer wrote to The Canadian Surety Company, advising them that circumstances were becoming suspicious, that the Employee's account was overdue and that it was giving notice of this fact in accordance with the terms of the bond.

On the 10th of February, 1930, the Employee went into liquidation.

It was then found out that the affairs of the Employee were in bad shape. Its books had not been written up since two years. Indeed, it required the liquidator four or five months to have them put in order. The Employer

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had a claim of $17,753.09 for premiums due to it on policies actually issued on its behalf and figuring in the daily reports, in addition to a further claim of $680.20 of premiums later found out to have been collected by the Employee and unreported.

As it turned out when the liquidator succeeded in clearing up the affairs of the Employee, the total liabilities amounted to $52,406.29, and the total assets realized netted a sum of $968.37.

The Employer made a claim on the bond to the Canadian Surety Company.

The claim was met by the contention on behalf of the Canadian Surety Company, that the Employer's pecuniary losses were not sustained as a result of any act or acts of larceny or embezzlement on the part of the Employee, and that, consequently, the Canadian Surety Company owed nothing to the Employer in respect of the bond.

The Superior Court came to the conclusion that the Employer was entitled to the amount of $680.20, representing the premiums which had never been reported by the Employee, and for a further amount of $2,702.89, being the total sum of items contained in the claim of $17,753.09, which that court found to have been proven as being covered by the surety bond. The balance of the claim was disallowed.

The court held that, although the Employee or its officers and servants were perhaps not guilty of larceny, or of embezzlement in the strict sense of the word, yet the surety bond ought to be widely interpreted, and its terms were sufficient to cover the cases of fraud and dishonesty which had been proven to have existed in this instance.

The majority of the Court of King's Bench (Appeal Side) (1) took practically the same view and affirmed the judgment.

Before this Court, the responsibility of the appellant was not seriously disputed with regard to the item of $680.20. The trial judge held it was clearly covered by the bond; and there does not seem to be any doubt that, with regard to it, the judgments appealed from should not be disturbed.

(1) (1935) Q.R. 59 K.B. 295.

Only one question was really raised so far as that item of $680.20 is concerned, and that was that, through some oversight, the commission to which the Employee was entitled on the premium represented by that amount had not been deducted in allowing it to the Employer respondent. Indeed, the Employer seems to have forgotten to put in specific evidence of what the rate of that commission should be in respect of the item in question. It was, however, agreed at bar that the usual commission charged by the Employee during the course of its relations with the Employer was 20%. We see no reason why this small matter should not be adjusted by this Court; and deduction being made of that commission, this award in favour of the respondent ought therefore, to stand, in any event, up to the amount of $544.16.

It remains to consider the other item of $2,702.89, representing the total sum of items allowed by the trial judge out of the claim of $17,753.09 for premiums on policies mentioned in the daily reports and which the Employee has failed to pay to the Employer.

As already said, the appellant strenuously opposes that claim on the ground that it is not covered by the surety bond, inasmuch as, so the appellant contends, these losses were not sustained by the Employer as a result of any act of larceny or embezzlement on the part of the Employee.

It seemed to be common ground between the appellant and the respondent that the Employee could not be charged with larceny; and our discussion of this branch of the case may, therefore, be restricted to the question whether the acts of the Employee constituted the crime which the bond intended to designate under the appellation of embezzlement; and whether, so as to be covered by the bond, the acts of the Employee must necessarily consist in embezzlement; or, as decided by the judgments appealed from, it is sufficient if they are found to have been fraudulent or dishonest and such indeed as to amount to embezzlement, if not in the technical sense, at least in the non-technical or popular sense of that word. On behalf of the appellant, it was strongly urged that larceny and embezzlement were terms of art, relating to something well known and which had acquired specific meaning in the criminal law. It was said that the scope of the appellant's liability was strictly

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defined in the surety bond and that it could not be extended beyond the limits within which it was contracted (Art. 1935 C.C.). The word "embezzlement" in the bond had to be construed in the same way as it would be construed when used in an indictment (*Debenhams Ltd.* v. *Excess Insurance Co. Ltd.* (1). The acts proven against the Employee did not come within the strict definition of embezzlement, as was practically admitted by the judgments appealed from; and, therefore, the respondent had failed to establish the responsibility of the appellant under the bond.

It should be admitted that the case is not free from difficulty. After having given it careful and anxious consideration, we have reached the conclusion that, on the particular bond subscribed by the appellant and, as a result of the circumstances in this case, the decision reached by the Superior Court and the majority of the Court of King's Bench was right and should not be reversed by us.

We have been referred to a number of cases where a similar conclusion was arrived at by different courts in England, in the United States and in Canada; but when the cases there decided come to be compared with the present one, it is at once apparent that none of them could really be regarded as an authority upon which the decision in this case may be founded, because, in those cases, the language of the bond was dissimilar. It is evident that a decision having to do with the construction of a particular document can never serve as a precedent for the construction of another document not in every respect similar to the former one. Although general principles enunciated here and there in some of the judgments cited to us should, of course, be given due weight, it need not be said that the result of the present case depends essentially and exclusively upon the interpretation of the particular bond now under discussion.

It is not necessary here to attempt to give a precise definition of embezzlement. The term is not to be found in the Criminal Code of Canada. In a technical sense, it connotes the act of a person employed in the capacity of a clerk or servant fraudulently appropriating to his own use the whole or any part of a chattel, money, or valuable

(1) (1912) 28 T.L.R. 505.

security delivered to, or received, or taken into possession by him, for, in the name, or on the account, of his master or employer (Kenny, Outlines of Criminal Law, 13th ed. p. 230).

In view of the relations existing between the Employer and the Employe and of the facts established in evidence, it may be granted that the Employee in this case was not guilty of embezzlement in that technical sense.

But it should also be emphasized that if, as between the appellant and the respondent, the bond has to be construed in that narrow sense, it could not possibly cover any act done by the Employee, as such, in the course of its relations with the Employer. Strictly speaking and having regard to the course of dealing, the moneys paid as premiums by the insured to the Employee were not moneys belonging to or owned by the Employer. They never were so in any case throughout the whole course of the relations between the two. They never could be, in view of the agreement between them. It follows that if the respondent should be held to the strict meaning of the word Embezzlement, the bond was absolutely useless for its purposes and of no value to it. This result would be contrary to the rules of interpretation laid down in the Civil Code (arts. 1014 and 1015).

It should be taken that the appellant and the respondent, when they agreed upon some sort of suretyship to protect the respondent against the acts of the Employee, must have intended to agree upon a contract which would be of some effect in favour of the Employer. And we think there are evidences of that intention in the wording of the bond, envisaged as a whole, and also the interpretation put upon it in the way it was dealt with by the appellant.

That class of bonds—and this is equally true of the present one—is not, in effect, a surety bond; it partakes more of the nature of an insurance policy. The Civil Code (art. 1929) defines a surety as

> the act by which a person engages to fulfil the obligation of another in case of its non-fulfillment by the latter, etc. * * *

This is not quite what the appellant undertook to do under the bond subscribed by it. It did not undertake, nor did it intend to undertake, to fulfil the obligation of the Employee in this case. It promised, under the bond, to indemnify the respondent for

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such pecuniary losses * * * sustained of money or other personal property (including that for which the Employee is responsible) by any act or acts of larceny or embezzlement on the part of the Employee.

This is truly the function of an insurance policy; and we may add that in several instances before this Court a bond of a similar character was treated and was regarded as such; (compare amongst others: *The Corporation of the Town of Arnprior* vs. *United States Fidelity & Guaranty Company* (1); *Railway Passengers Assurance Company* vs. *Standard Life Assurance Company* (2); *United States Fidelity & Guaranty Company* vs. *The Fruit Auction of Montreal* (3); and there were many others).

The main consequence of this interpretation is that article 1935 of the Civil Code of Quebec (by force of which "Suretyship is not presumed; it must be expressed and cannot be extended beyond the limits within which it is contracted") has no application to a bond like the present one which is in effect an insurance policy and which, by its real character, is a commercial contract to which should be given a liberal interpretation.

The respondent, we think very properly, pointed to the fact that when, in the other parts of the bond, the act of the Employee is referred to as giving rise to some action under the bond, it is referred to as "dishonesty" or "default," both of which are clearly not as limited as the word "embezzlement."

But the strongest evidence of the intention of the parties was pointed out both by the trial judge, Mr. Justice Philippe Demers, and by Mr. Justice Saint-Germain in the Court of King's Bench.

Clause 5 of the bond is to the effect that

the Surety shall not be liable for loss sustained by the Employer * * *
(2) in consequence of premiums unpaid on policies issued, although such premiums may have been reported and assumed by the Employee as chargeable to his account. * * *

Now, if one bears in mind the method whereby the business was carried out between the Employer and the Employee, the exception we have just quoted would indicate that the appellant was fully aware of this method, for the particular clause is clearly intended to meet one of the features adopted by the parties for the conduct of

(1) (1914) 51 S.C.R. 94. (2) (1921) 68 S.C.R. 79.
(3) [1929] S.C.R. 1.

business between them, as it is disclosed in the earlier part of this judgment.

Mr. Justice Philippe Demers and Mr. Justice Saint-Germain point out that the insertion of that particular clause would be quite inconsistent with the interpretation of the word embezzlement in the strict technical sense already indicated. Indeed, the clause proceeds to exclude liability on the part of the Canadian Surety Company for acts which could never conceivably be regarded as larceny or embezzlement.

In truth, we think Mr. Justice Demers was right in saying that the clause in question might be construed to mean

que la caution s'est obligée de rembourser toute partie de primes collectées et retenues par l'employé, moins sa commission, qu'il y ait fraude ou non. Un homme du commun qui recevrait un pareil contrat l'interprèterait évidemment en ce sens.

And Mr. Justice Saint-Germain adds:

Pourquoi cette distinction entre les primes non payées et les primes payées, au sujet de la responsabilité de la compagnie-appelante, si dans aucun cas, qu'il s'agit de primes payées ou de primes non payées, la responsabilité de la dite compagnie disparaissait du moment qu'un rapport avait été fait pour ces primes et que le montant en avait été assumé par l'Independent?

We think the correct view of the bond given by the appellant, since it was undoubtedly intended to be of some value to the respondent, is that it would not be restricted to acts of embezzlement in the technical sense, and we agree with Mr. Justice Demers and the majority of the Court of King's Bench that it should be interpreted as meaning that the appellant would be responsible

pour les montants qui ont été retenus frauduleusement par l'appelante.

Moreover, there is strong evidence that such is the way in which the appellant itself interpreted the bond it has subscribed in the premises, because when it was called upon to supply to the respondent a form which the latter was to fill in, in order to lay its claim before the appellant, the form which it supplied began by the following words:

In the matter of the default of Independent Insurance Agencies Limited *for whose honesty* the said Surety Company issued its bond in the sum of five thousand dollars * * *

The following is a detailed statement of the loss resulting from said default and all sums due and owing by the said defaulter and the balance stated below is the true net loss resulting from the said default, etc.

The claim form, moreover, closed with the words:

That the foregoing statement is correct and that the loss resulting to Quebec Insurance Agencies Limited from the default of Independent

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Insurance Agencies Limited is as above stated, and that the items composing the debits are chargeable to the said defaulter on the specified dates and that all sums due and owing by said defaulter to Quebec Insurance Agencies, Limited, are thereby correctly stated.

The true effect of the expressions used in that claim form and those which are scattered throughout the bond, interpreted (as they should be) the one by the other (and) giving to each the meaning (to be) derived from the entire act, (art. 1018 C.C.) is that the Superior Court and the Court of King's Bench were justified in interpreting the bond as they did; and their judgments ought to be confirmed.

The definite impression one has from the evidence is that the acts of the Employee, during the last period of its relations with the Employer, were the result of a scheme systematically organized for the purpose of fraudulently depriving the respondent of the legitimate return to it of the amount of the premiums received by the Employee as the proceeds of the policies issued by the Employee in the name and on behalf of the Employer. These proceeds were fraudulently appropriated. (Roscoe, Criminal Evidence—15th ed.—p. 597—Kenny, p. 236).

As found concurrently by the Superior Court and the Court of King's Bench, the fraudulent intention of the Employee inevitably results from the circumstances established, even if it be true that the premiums themselves, when they were paid by the assured, did not immediately become the property of the Employer; even if, in respect of these premiums, the relation of the parties was that of debtor and creditor. It should not be forgotten that, under the law of Quebec, " the property of a debtor is the common pledge of his creditor " (art. 1981 C.C.); and the Employee acted consistently in such a way as to render itself insolvent and to defeat absolutely any possibility of the respondent being able to recover the amount of the premiums. (See Kenny—Outlines of Criminal Law, p. 244). It is proven that the respondent has itself paid to the several insurance companies the amounts now forming the basis of its claim.

The situation in which the respondent found itself is the result of the fraudulent manœuvres and manipulations perpetrated by the Employee, who appropriated to its own use the moneys which, though not earmarked, constituted practically the only source from which it could expect to pay its Employer. It did so knowingly and with a fraudu-

lent intent (9 Halsbury, 2nd ed., pp. 522 & 523), and with criminal dishonesty (Kenny, p. 234).

To use the words of Hamilton, J. (afterwards Lord Sumner), in the case cited by the appellant, *Debenhams* v. *Excess Insurance Company Limited* (1),

> he made away with money that was really its employer's * * * He converted it to his own use, so that he might have the benefit of it and might cheat them out of it. * * *

If, said the learned judge, the jury were satisfied that such was the situation, they were entitled to say, and should say that there was embezzlement against which the plaintiff was insured.

Likewise, in the present case, we think the respondent has shown a set of facts and the existence of conditions against which it was insured by the appellant and, as a consequence of which he is entitled to have its claim maintained in part.

The result is that the judgments appealed from should be upheld, except for the slight modification due to the fact above mentioned that the Employee's commission on the sum of $680.20 was overlooked in the disposition made of the case both by the Superior Court and by the Court of King's Bench. The amount of $680.20 as already indicated, should be reduced to $544.16. As for the other amount of $2,702.89, also awarded against the appellant, it was not our understanding at the argument before this Court that it was equally subject to the deduction of the 20% commission. It appears to us that this amount was made up of items shown in the monthly accounts and from which, therefore, the commission had already been deducted. In accordance with our present view of the situation, the amount of $2,702.89 should stand as originally allowed by the Superior Court. If, however, we should be mistaken on the point, the matter may be spoken to before the judgment is settled. We wish to indicate to the parties that we agree that the Employee's commission of 20% should not be included in the amount which the appellant will be called upon to pay to the respondent as a result of the present judgment; but our impression is that such commission has already been taken into account in fixing the balance of $2,702.89.

(1) (1912) T.L.R. 505.

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With the modification just mentioned, the appeal should be dismissed with costs.

DAVIS J. (dissenting): The appellant, as surety, bound itself to pay the respondent such pecuniary losses, not exceeding $5,000, as the respondent shall have sustained of money or other personal property (including that for which the respondent is responsible), "by any act or acts of larceny or embezzlement" on the part of Independent Insurance Agencies Limited directly or through connivance with others while in any position or at location in the employ of the respondent. It was a common form of fidelity bond for an employer's protection against an employee but the employer, so called in the bond, was a general insurance agency (respondent) and the employee, so called in the bond, was Independent Insurance Agencies Limited, a sub-agent, both being incorporated companies. The sub-agent carried on a general insurance business and acted as agent for other principals besides the respondent. By the agreement between the respondent and the sub-agent, the sub-agent made daily reports to the respondent of the business done by it on the respondent's behalf; at the end of each month the respondent made up and delivered to the sub-agent a monthly statement of account (on the basis of the daily reports that had been received by it) shewing the amount of premiums payable less commissions and cancellations; the respondent allowed the sub-agent sixty days from the end of each month for payment of the net balance shewn on the statement for that month and sometimes even further delay was allowed. The agreement involved payment of the premiums ultimately by the sub-agent to the respondent whether in fact they were ever collected or not. No specific moneys were, however, intended to be ear-marked and set aside, and there was no obligation on the sub-agent to deliver over in specie the identical money or security received by it. The respondent looked to its sub-agent for payment of a debt. A running debtor and creditor account was thus established by arrangement betwen the parties. The liability to pay was purely a civil liability. There came a time, however, when the sub-agent was unable to pay and went into bankruptcy. The respondent does not contend that there is any claim based on larceny; the claim is put forward as embezzlement

within the meaning of the policy. But a contract of indemnity against loss by embezzlement cannot be turned into a guarantee of the solvency of the sub-agent at the date of the expiration of the periods of delay granted by the respondent to its sub-agent.

The use of the word "dishonesty" in the policy in a provision whereby the policy was to terminate on the discovery by the respondent of "loss" under the policy, or of "dishonesty" on the part of the sub-agent, cannot in my view extend or enlarge the express risk undertaken by the policy, larceny or embezzlement, to acts of "dishonesty." Nor can the use of the word "defaults" be taken to extend the precise words of the obligation. Nor, again, can more or less loose language in the form of the claim papers provided by the appellant enlarge or extend the exact risk covered by the language of the policy itself.

The question of law is whether or not upon a proper interpretation of the language of the policy the words "larceny" and "embezzlement" are to be given their technical and strict meaning. There is much to be said for the view that these fidelity bonds are ordinary commercial contracts and that a liberal interpretation may well be put upon them. But upon consideration I have arrived at the conclusion that we are not entitled to extend the meaning of technical terms in a contract of suretyship beyond what is the strict meaning of the words. That was the view taken in *Debenhams'* case (1), by Lord Sumner, then Hamilton J. That was an action on a fidelity policy issued to the plaintiffs by the defendants whereby the latter agreed

> to reimburse to the employer (the plaintiffs) to the extent of the sum stated against the name of the respective employed set forth in the schedule contained herein, such pecuniary loss, if any, as the employer shall sustain by any act of larceny or embezzlement on the part of any one or more of the said employed in connexion with the respective duties stated in the schedule hereto.

The plaintiffs alleged that one of their employees had received in the course of his employment various sums of money for or on account of the plaintiffs, and had fraudulently converted the same to his own use, and had not paid the same to them. By reason thereof they alleged that they had sustained pecuniary loss by larceny or embezzle-

(1) (1912) 28 Times L.R. 505.

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ment within the meaning of the policy. The defendants denied that the alleged pecuniary loss was caused by larceny or embezzlement on the part of the employee. They said that the question was really one of account between the employee and the plaintiffs. Mr. Justice Hamilton (as he then was) in the course of his summing up said that the term "embezzlement" in this policy meant the same thing as it meant in an indictment. There was no reason for giving it any less strict meaning in the policy by which the plaintiffs were insured than if a direct charge was being made. It was of the very essence of it that the jury must be satisfied that what the man did he did fraudulently and dishonestly; because mere carelessness, mere puzzleheadedness, mere objection to discharge his routine business and keep accounts, mere unwillingness to come back to England and settle his account, mere careless omissions would not of themselves constitute, or even evidence, the crime that it is said was committed, unless there was evidence to shew that which he did was dishonestly done. But if he fraudulently embezzled, that was to say, made away with money that was really his employers', and if he converted it to his own use, so that he might have the benefit of it and might cheat them out of it, then, if the jury were satisfied of that, they were entitled to say, and should say, that there was the embezzlement against which the plaintiffs were insured.

In *London and Lancashire Fire Insurance Co.* v. *Bolands Ld.* (1), the plaintiff was insured against loss by burglary, housebreaking and theft of cash in the cashier's office in the plaintiff's bakery in Dublin, subject to the proviso that

> this insurance does not cover loss directly or indirectly caused by or happening through or in consequence of * * * riots. * * *

During the currency of the policy, four armed men entered the plaintiff's premises on a summer evening while it was still daylight, held up the employees with revolvers, and took possession of all the money they could find in the cashier's office. There was no disturbance in the neighbourhood at the time. In answer to the plaintiff's claim to recover the loss, the insurance company relied on the proviso in the policy. The case went to the House of Lords

(1) [1924] A.C. 836.

and it was there unanimously held that the insurance company was not liable because the theft was conducted in a manner which constituted a riot at law. Lord Sumner at p. 847 said:

> It is true that the uninstructed layman probably does not think, in connection with the word "riot," of such a scene as is described in the case stated. How he would describe it I know not, but he probably thinks of something, if not more picturesque at any rate more noisy. There is, however, no warrant here for saying that, when the proviso uses a word which is emphatically a term of legal art, it is to be confined, in the interpretation of the policy, to circumstances which are only within popular notions on the subject, but are not within the technical meaning of the word.

The House of Lords in construing the policy interpreted it in terms of legal art.

Equitable Trust Company of New York v. *Henderson* (1), is a recent decision of Rowlatt J. There the plaintiffs, who carried on business in New York, took out a policy of insurance in London against loss which they might incur by having acted upon any document which might prove "to have been forged," and during the currency of the policy the plaintiffs were induced to lend money to a firm by a document containing a false statement of the firm's assets and liabilities. Before the whole of the loan had been repaid the firm became bankrupt and the plaintiffs sued on the policy. By the law of the State of New York, forgery includes "a false statement of financial condition." A member of the firm had been convicted in New York of forgery. The plaintiffs contended that the word "forged" in the policy must be construed by the law of New York where the loss occurred and that therefore it was immaterial if the document was not a forgery according to English law. Counsel for the defendant submitted that while the document had been falsely made, that fact did not constitute it a forged document. It had the effect which it pretended to have and was what it pretended to be; its only fault was that it did not tell the truth. The false making of a document was something different from the making of a false document. Mr. Justice Rowlatt said that though the plaintiffs admitted that the policy as a whole must be construed according to English law, they contended that the word "forged" must be construed as defined by the law of the place where the loss occurred. As

(1) (1930) 47 Times L.R.90.

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THE CANADIAN SURETY CO. v. QUEBEC INSURANCE AGENCIES LTD.

Davis J.

to this, he held that even if the document was a forged document according to the law of New York, the word "forged" in the policy was used merely to describe an existing state of fact and was not a term of art to be construed according to the criminal law of the place where the loss happened; and he dismissed the action.

Larceny and embezzlement are technical terms and in construing the language of the policy they should be given their strict meaning.

So far in what I have said I have had in mind the major claims in respect of items regularly reported and accounted for but never paid. The items of $680.20, however, were never reported by the sub-agent to the respondent or accounted for, and consequently stand in a different position. The fraudulent omission to account brings these items within the policy.

I would therefore allow the appeal and reduce the judgment at the trial to $544.16 (the amount of the $680.20 items less 20% agreed commission) with costs of an action of that amount. The appellant should have its costs of its appeal to the Court of King's Bench (Appeal Side) and to this Court.

Appeal dismissed with costs.

Solicitors for the appellant: *Brown, Montgomery & McMichael.*

Solicitors for the respondent: *Laverty, Hale & Laverty.*