

Motor and General Insurance Company
Limited

Appellants

v.

John Pavy

Respondent

FROM

THE COURT OF APPEAL OF
TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
15TH DECEMBER 1993

Present at the hearing:-

LORD GRIFFITHS
LORD GOFF OF CHIEVELEY
LORD LOWRY
LORD SLYNN OF HADLEY
LORD WOOLF

[Delivered by Lord Lowry]

The question for decision in this appeal is whether, on the true construction of the Motor Vehicles Insurance (Third Party Risks) Act, Chap. 48:51 (1974), of Trinidad and Tobago ("the Act"), a claimant who has suffered damage through the fault of an insured driver of a motor vehicle has, subject to certain exceptions and in the circumstances of the present case (where the insured has been in breach of the policy after the accident), a right to recover directly from the insurers, as the respondent has (hitherto successfully) contended, in respect of a claim for damage to property or whether, as the appellants maintain, the claimant's right to recover in these circumstances is confined to claims in respect of death or bodily injury.

The directly relevant provisions of the Act are sections 4(1)(b), 4(5), 8 and 10(1). It will, however, be convenient to set out all the provisions which appear to bear on the problem of interpretation:-

"3.(1) Subject to this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a public road unless

there is in force in relation to the user of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Act.

...

4.(1) In order to comply with the requirements of this Act, a policy of insurance must be a policy which -

- (a) is issued by a person who is an insurer; and
- (b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to or damage to the property of any person caused by or arising out of the use of the motor vehicle on a public road."

Section 4(2) lists the liabilities which, in the case of death or bodily injury, a policy is not required to cover, while section 4(3) excludes certain kinds of property from the definition of "property" for the purposes of the Act.

"4.(4) In the case of damage to property, a policy of insurance shall not be required to cover liability in respect of any sum in excess of -

- (a) fifty thousand dollars where the liability arises out of one claim by one person;
- (b) two hundred thousand dollars where the liability arises out of a series of claims by different persons in respect of the same accident.

(5) Sections 8 and 12 shall not apply to damage to property."

(It is the effect of section 4(5) which has to be considered.)

"8.(1) Any condition in a policy or security issued or given for the purposes of this Act, providing that no liability shall arise under the policy or security, or that any liability so arising shall cease, in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy or security, shall be of no effect in connection with such claims as are mentioned in section 4(1)(b).

(2) Nothing in this section shall be taken to render void any provision in a policy or security requiring the person insured or secured to repay to the insurer or the giver of the security any sums which the latter may have become liable to pay under the policy or security and which have been applied to the satisfaction of the claims of third parties.

...

10.(1) If, after a certificate of insurance has been delivered under section 4(8) to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under section 4(1)(b) (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments.

(2) No sum shall be payable by an insurer under the foregoing provisions of this section -

- (a) in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given or within such other period as the Court may in its absolute discretion consider equitable the insurer had notice of the bringing of the proceedings;
- (b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or
- (c) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either
 - (i) before the happening of the said event the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed; or
 - (ii) after the happening of the said event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made such a statutory declaration as aforesaid; or

- (iii) either before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Act in respect of the failure to surrender the certificate.

(3) No sum shall be payable by an insurer under the foregoing provisions of this section, if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled to do so apart from any provision contained in it.

However, an insurer who has obtained such a declaration in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within seven days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled, if he thinks fit, to be made a party thereto.

...

(5) In this section the expression 'material' means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk, and, if so, at what premium and on what conditions; and the expression 'liability covered by the terms of the policy' means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy.

11. Where a certificate of insurance has been delivered under section 4(8) to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in section 17(1) or (2), shall, notwithstanding anything in this Act, not affect any such liability of that person as is required to be covered by a policy under section 4(1)(b), but nothing in this section shall affect any rights against the insurer conferred by this Act on the person to whom the liability was incurred.

12.(1) Where a certificate of insurance has been delivered under section 4(8) to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any of the following matters:

- (a) the age or physical or mental condition of persons driving the vehicle;
- (b) the condition of the vehicle;
- (c) the number of persons that the vehicle carries;
- (d) the weight or physical characteristics of the goods that the vehicle carries;
- (e) the times at which or the areas within the vehicle is used;
- (f) the horse power or value of the vehicle;
- (g) the carrying on the vehicle of any particular apparatus; or
- (h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under this Act,

shall, as respects such liabilities as are required to be covered by a policy under section 4(1)(b), be of no effect.

(2) Nothing in this section shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this section shall be recoverable by the insurer from that person."

It will be necessary for their Lordships to trace the origins and history of the Act, starting with the legislation of 1930 and 1934 in the United Kingdom, which was the model for the Trinidad and Tobago Motor Vehicles Insurance (Third Party) Ordinance of 1934, Ch. 16 No. 4, but it may be helpful at this point to sketch the factual background.

The appeal is taken from a judgment of the Court of Appeal of Trinidad and Tobago (Davis, des Iles and McMillan JJ.A.) given on 26th October 1990 and dismissing an appeal by the Motor and General Insurance Company Limited ("the insurers") from the judgment given on 30th September 1987 by Master Douglin, a

Master of the High Court, whereby he ordered the insurers to pay to the respondent (whom their Lordships will refer to as "the third party") a sum representing the damage, with interest thereon and costs, sustained by the third party's motor vehicle as a result of a collision on 30th June 1979 with another vehicle, owned by John Sudeen and Virginia Boodoo and driven by Sudeen, which was caused by the negligence of Sudeen. Both he and Boodoo were insured to drive their vehicle by a policy which was issued by the insurers and contained inter alia the following conditions:-

- "1. Notice shall be given in writing to the Company [that is, the insurers] immediately upon the occurrence of any accident or loss or damage or in the event of any claim. Every letter, claim, writ, summons and/or process shall be forwarded to the Company immediately on receipt by the Insured.

...

9. The due observance and fulfilment of the terms and conditions of this policy in so far as they relate to anything to be done or complied with by the Insured shall subject to the provisions of any enactment relating thereto be conditions precedent to the liability of the Company to make any payment under this policy."

The third party commenced an action for damages against Sudeen on 30th January 1981. In breach of condition 1 neither Sudeen nor Boodoo brought or forwarded the writ to the insurers. The third party's solicitor, however, in accordance with section 10(2)(a) of the Act notified the insurers by letter of the same date that an action had been commenced against Sudeen. On 21st October 1981 the third party entered judgment in default of defence and on 26th February 1982 damages were assessed at \$6,905, with interest thereon at 10%, and costs were fixed at \$4,145. On 30th September 1982 the third party commenced an action against the insurers in reliance on section 10(1) of the Act in order to recover the unpaid judgment debt. Judgment in default of defence was entered on 20th October 1982 and on 28th October the insurers paid \$13,432.35 to the third party's solicitors.

On 2nd November 1982 the insurers issued a summons for an order that the default judgment be set aside. On 30th September 1987 Master Douglin heard the summons and refused to set aside the judgment. First rejecting the insurers' untenable argument that Sudeen was not their insured, he then stated the crucial question to be whether there was a triable issue (1) in respect of the insurers' contention that the writ in the third party's action against Sudeen was never brought or forwarded to the insurers by the insured or by anyone on their behalf in breach of condition 1 and also (2) in respect of the question whether this breach would exempt the insurers from liability.

Rightly treating the second part of that question as the real point for decision and having referred to *Gray v. Blackmore* [1934] 1 K.B. 95, McGillivray & Parkington, Insurance Law 7th edition (1981) page 846 paragraph 2070 and Sir Alfred Crane, The Law of Compulsory Motor Vehicle Insurance, 2nd edition (1975) page 149, he held that the insurers had no defence to the third party's action but, in reaching this conclusion, he did not discuss the effect of section 4(5) of the Act on section 8 or the effect of section 8 on section 10(1).

In the Court of Appeal McMillan J.A., with whom the other members of the court agreed, having reviewed the history of the legislation and the circumstances in which insurers are directly liable to third parties, concluded his judgment as follows:-

"The provisions of section 10 of the U.K. Act of 1934 are reflected in section 10 of our Third-Party Risks Act. Had the judgment in High Court Action No: 390 of 1981, which gave rise to the action from which this appeal stems, been in respect of the death or bodily injury to the respondent herein there would be no question that the appellant would be liable to satisfy that judgment. It was, however, in respect of damage to property. In this respect our own statute is wider in scope than the U.K. legislation.

By an amendment in 1974 motor vehicle insurance in respect of property damage was also made compulsory here, with certain exceptions which are not material to this matter, and the provisions of section 10 of our Third-Party Risks Act apply to judgments obtained in respect of property damage against any person insured by the policy covering the liability for that damage. However, it is specifically provided that sections 8 and 12 of the Act shall not apply to property damage. Those are the sections which rendered certain conditions contained in standard policies void as against third parties (emphasis supplied). Accordingly, the attorney for the insurers here submits that since their assured was in breach of the condition requiring him to notify them of the issue of the writ in High Court Action No: 390 of 1981, no liability attaches to them under section 10.

I am unable to accept that submission since;

- (a) the liability was covered by the policy;
- (b) the breach did not entitle the insurers to avoid or cancel the policy but only to evade liability, thereunder;
- (c) in the High Court Action which gave rise to this appeal the respondent's claim was founded on section 10(1) of the Act and the respondent's

rights in that action were not subrogated to those of the assured as they would have been if the action was brought in pursuance of section 17;

- (d) even if it can be said that the breach of the condition entitled the insurers to avoid, as distinct from evade, the policy, there has been no misrepresentation or non-disclosure of a material fact such as would have entitled the insurers to [a] declaration in an action brought under section 10(3);
- (e) in any event no such declaration has ever been sought;
- (f) the insurers have suffered no prejudice since they had due notice of the issue of the writ as required by section 10(2) (a) of the Third Party Risks Act.

For these reasons I would dismiss the appeal with costs. I would only add, however, that the result may well have been different if the condition breached had been one referred to in Section 12 of the Act, or other matters raised in the High Court had been raised on this appeal."

On 15th July 1991 the Court of Appeal granted leave to the insurers to appeal to the Privy Council. The appeal was registered on 9th December 1991 but on 11th February 1992 was dismissed for want of prosecution. The parties then having agreed that the appeal should be restored but that the third party should not thereby be prejudiced, their Lordships restored the appeal on 15th June 1992.

McMillan J.A. gave, as one reason for rejecting the insurers' case the fact that -

- "(f) the insurers have suffered no prejudice since they had due notice of the issue of the writ as required by section 10(2) (a) of the Third Party Risks Act."

The third party persisted in this argument both in the respondent's printed case and before the Board. Their Lordships take the opportunity of disposing summarily of this point by reference to the judgment of Bingham J. in *Pioneer Concrete v. National Employers Mutual Insurance* [1985] 2 All E.R. 395 at pages 400 g-j and 403 g-j, which in their opinion fully and correctly states the relevant law. The fact that the insurers' reliance on the failure of their insured to comply with condition 1 of the policy was completely devoid of merit is irrelevant. The point, once taken, provides a complete defence to a claim by the insured to be indemnified under the policy. Nor does the case of *Barrett Bros (Taxis) Ltd. v. Davies* [1966] 1 W.L.R. 1334 afford any help to the third party if he cannot succeed by reference to the construction of the Act. Accordingly, the only question for their Lordships' decision is whether, in the events which have happened, the third party's claim

against the insurers can be defeated by the conditions of the policy because the claim is based on damage to property, although it clearly would succeed, despite these conditions, if based on death or bodily injury.

In the absence of statutory provisions the insurers could have escaped liability in this case by relying on the insured's breach of condition 1 of the policy when read with condition 9. The third party, however, relies on section 10(1) of the Act as authorising recovery by him in spite of the breach of condition 1 in respect of any risk which is compulsorily insured against by virtue of section 4(1)(b) including, since the 1974 amendment took effect, damage to property. But the insurers in turn rely on section 4(5), which was also introduced in 1974 and provides that sections 8 and 12 shall not apply to damage to property. Those are the sections which, to the benefit of third parties, nullify certain conditions in insurance policies, such as condition 1 of the policy with which the present case is concerned, the breach of which by the insured relieves the insurers of liability. Therefore, on the basis that section 8 (relevant here) and section 12 do not apply to damage to property, the insurers contend that the third party in this case cannot recover, their argument being that for the purpose of his claim condition 1 remains in operation.

On the other hand, in order to understand the effect of section 4(5), which disapplies section 8 from damage to property, it is necessary to consider what is the function of section 8 in relation to claims based on death or bodily injury and hence what would be its function (but for the disapplying effect of section 4(5)) in relation to claims based on damage to property. It is also germane to consider section 12 because it, too, is touched by section 4(5).

It is instructive to look at the United Kingdom legislation, the model for the Act and for the Ordinance which preceded it. The Third Parties (Rights against Insurers) Act 1930, which was not confined to motor insurance and is still in force, applied to Great Britain (there was identical legislation in Northern Ireland) and received the Royal Assent on 10th July 1930. Its purpose, expressed in the long title, was "to confer on third parties rights against insurers of third party risks in the event of the insured becoming insolvent and in certain other events" and its contents were reproduced in sections 15 to 17 of the Motor Vehicles Insurance (Third Party) Ordinance (Ch. 16 No. 4) 1934 ("the Ordinance"), which was entitled "An Ordinance to make provision for the protection of third parties against risks arising out of the use of motor vehicles". The corresponding provisions in the Act are sections 17 to 19. On 1st August 1930 came the Road Traffic Act 1930, in Part II of which, entitled "Provisions against third party risks arising out of the use of motor vehicles", sections 35, 36 and 38 were the model for sections 3, 4 and 6 of the

Ordinance and sections 3, 4 and 8 of the Act. The combined effect of the Third Parties Act and section 38 of the Road Traffic Act 1930 was to enable the third party to be subrogated to the rights of an insolvent insured against his insurers, at the same time providing that the third party would not be defeated by the breach of a condition subsequent which would have defeated a claim by the insured. These provisions conferred limited and somewhat inadequate benefits on the third party, as was quickly demonstrated in *Gray v. Blackmore* [1934] 1 K.B. 95 per Branson J. at pages 105-108: see also *Jenkins v. Deane* (1933) 102 L.J.K.B. 250 and the further observations of Goddard L.J. in *Zurich etc Co. Ltd. v. Morrison* (1942) 72 Ll.L.L.R. 167 at page 173:-

"Part II of the Road Traffic Act, 1934, was passed to remedy a state of affairs that became apparent soon after the principle of compulsory insurance against third-party risks had been established by the Road Traffic Act of 1930. That Act and the Third Parties (Rights against Insurers) Act, passed in the same year, would naturally have led the public, at least those who were neither lawyers nor connected with the business of insurance, to believe that if thereafter they were, through no fault of their own, injured or killed by a motor car, they or their dependants would be certain of recovering damages, even though the wrongdoer was an impecunious person. How wrong they were quickly appeared. Insurance was left in the hands of companies and underwriters who could impose what terms and conditions they chose."

Sections 10 and 12 of the Act of 1934 improved the position of third parties and were mirrored by sections 8 and 10 of the Ordinance and later by sections 10 and 12 of the Act. Section 11 of the 1934 Act, like section 9 of the Ordinance and section 11 of the Act, sounded a reminder of the rights of third parties against insurers which, in the case of bankruptcy of the insured, were conferred by section 1 of the Third Parties (Rights against Insurers) Act 1930, section 15 of the Ordinance and section 17 of the Act. The Ordinance, therefore (and subsequently the Act), embodied in one measure the provisions in favour of third parties which were contained in the three United Kingdom statutes.

The Road Traffic Act 1960 was the first of three consolidating statutes. Section 206 absorbed, as subsections 206(1) and 206(2), section 12 of the 1934 Act and section 38 of the Road Traffic Act 1930. This rearrangement was carried into the Road Traffic Act 1972 as section 148 and again into the Road Traffic Act 1988 as a recast section 148. Section 10 of the 1934 Act, which imposed on insurers the duty to satisfy judgments, became in turn section 149 of the 1972 Act and section 151 of the 1988 Act. In 1987, to implement the Second Council Directive 84/5/EEC of 30th December 1983 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of

motor vehicles, the Secretary of State for Transport, in pursuance of section 2(2) of the European Communities Act 1972, amended the Road Traffic Act 1972 by means of the Motor Vehicles (Compulsory Insurance) Regulations 1987 (SI No. 2171), so that it became compulsory to insure up to an amount of £250,000 against liability for damage to property. Henceforth the duty to satisfy judgments was widened to include this liability. The effect of the amendments can be seen in sections 145 and 151 of the 1988 Act. Section 152(1)(c) corresponds to section 10(2)(c) of the Act but, consistently with the amendment of the 1972 Act by SI 1987 No. 2171, the words "or damage to property" now appear after the words "death or bodily injury". This is the amendment which, it would seem, ought to have been made to section 10(2)(c) of the Act in 1974, when insurance against liability for damage to property became compulsory under section 4(1)(b). Their Lordships would point out that the failure by the legislature of Trinidad and Tobago to make this amendment does not support an argument that "damage to property" was deliberately not added to section 10(2)(c) in 1974 for the reason that the legislature did not intend sums in respect of damage to property to be recoverable from insurers under section 10(1); that provision clearly permits recovery in respect of any such liability as is required to be covered by a policy under section 4(1)(b) as amended in 1974, including liability for damage to property up to the specified amount.

The third party must rely on section 10(1) of the Act. The relevant words, having regard to the 1974 amendment of section 4(1)(b), may for present purposes be paraphrased as follows:-

"If judgment in respect of any liability arising from the death of or bodily injury to or damage to the property of a third party (being a liability covered by the terms of the policy) is obtained against the insured, then the insurers shall pay to the third party the sum payable under the judgment in respect of the liability".

The insurers must therefore pay provided the insured's liability is a liability covered by the terms of the policy. These words are defined in section 10(5) as:-

"a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy."

It should be noted that third parties are entitled to recover from the insurers under section 10(1) in every case in which judgment is obtained and section 4(1)(b) as amended applies, and not only in cases where the insured is insolvent or is in breach of or not covered by the policy.

The insurers contend, as they must if they are to succeed, that the liability which has been incurred by the insured in the present case is not a liability covered by the terms of the policy on the ground that liability ceased and they were no longer on risk because of the breach of condition 1 by the insured. This argument, in the view of their Lordships, involves a misinterpretation of the relevant words. The definition in section 10(5) shows that a liability which is covered by the terms of the policy does not fail to be so covered unless the insurer either is entitled to avoid or cancel the policy or has actually done so. But the insured's breach after the event which gave rise to the claim entitled the insurers, not to avoid or cancel the policy, but merely to repudiate liability in respect of that particular event; the policy remained in force and (in the absence of a special condition) the insurers would still have been on risk if a subsequent event giving rise to a claim had occurred during the currency of the policy. Accordingly, a third party who has obtained judgment and proceeds under section 10(1) needs no help from section 8. That section becomes irrelevant and therefore, notwithstanding the exclusionary effect of section 4(5), the third party is in just as strong a position to enforce a claim based on damage to property as he would be to enforce a claim based on bodily injury. Where he does need section 8 (which will help where the claim is based on death or bodily injury but not where it is based on damage to property) is in proceedings under section 17 when the insured is insolvent. The third party is there merely subrogated to the rights of the insured against the insurer and, without the assistance of section 8, could not succeed in his claim against the insurer if the insured were in breach of a condition subsequent such as condition 1 in the policy here.

It will be recalled that the effect of section 38 of the Road Traffic Act 1930 was to render more beneficial in a particular area of insurance (namely, the compulsory insurance of liability for causing death or bodily injury by the use of a motor vehicle) the general right conferred on third parties by the Third Parties (Rights against Insurers) Act 1930. It was four years later that sections 10 and 12 of the Road Traffic Act 1934 conferred further benefits on third parties in the same area of compulsory insurance. Section 10 gave them a direct remedy against insurers, while section 12 nullified for their benefit the effect of some (though not of all) restrictions on the use of the vehicle which might have been in the policy and would otherwise have defeated their claims.

In the situation envisaged by section 12 of the Act the insured's liability would not be covered by the terms of the policy if an accident occurred for which he was to blame while his car was being used in disregard of one of the restrictions listed in section 12(1), and a third party who obtained judgment against the insured and then proceeded against the insurers under section 10(1) would need the help of section 12(1) to overcome the defence that the liability which gave rise to his claim was not "covered by the

terms of the policy". This is confirmed by the language of section 12(2), which refers to "any liability ... which is covered by the policy by virtue only of this section". The liability is covered by virtue of section 12(1), but the insurers can recover from the insured any sum paid by them in discharge of the liability: section 12(2).

As was pointed out in *Shawcross on the Law of Motor Insurance*, 2nd edition (1949) ("Shawcross"), the Motor Insurers' Bureau Agreement with the Minister of Transport in 1946, whereby insurers assumed extra-statutory liability to compensate third parties, has resulted in a dearth of authority on the relevant provisions of the Road Traffic Acts, since it has become for the most part unnecessary for the courts to interpret them. Discussing the Acts of 1930 and 1934, the learned author said at page 271:-

"Part II of the Road Traffic Act, 1930, was designed to prevent any person using a motor vehicle on the road unless he had provided security, by insurance or otherwise, whereby any liability incurred by him to a third party could be satisfied. This enactment was a considerable step towards the object of the principle which has been described. But it did not go far enough. Save for one section, it left untouched the principle that persons can make whatever contract they please. The consequence was that motor insurance policies continued in the form in which they had become customary. In this form they complied with the requirements of the Act with one hand, and with the other defeated the manifest object of it. They insured against any liability arising out of the use of the insured vehicle on the road, and at the same time provided that liability should not arise out of any use of the vehicle save that specified in the policy. Moreover, the policy bristled with conditions, the technical breach of which rendered the policy invalid, ineffective and useless to effect the object at which the Act aimed.

The words of Mr. Justice Goddard, as he then was, in *Jenkins v. Deane* (1933) 102 L.J.K.B. 250, may be referred to for a summary of some of the many loopholes which the Act of 1930 contained. The Act of 1934 was designed for the purpose of stopping those holes. This it was intended to effect by two methods. In the first place it compelled insurers to discharge any liability incurred by their assured in respect of fatal or bodily injury covered by the policy as soon as judgment in respect of it is obtained against him by a third party. In the second place it rendered ineffective in regard to such liabilities certain clauses in a motor policy which allowed insurers to issue policies purporting to cover the liability required to be covered by the 1930 Act, whilst in fact not covering that liability if the insured vehicle was being used in any manner

proscribed by the policy or if the assured had committed any technical breach of its formal terms."

At pages 282-3 Shawcross discusses the phrase "a liability covered by the terms of the policy", stating that it has two possible meanings. Either "a liability in respect of which an indemnity is enforceable under the terms of the policy or which would be so enforceable (emphasis added) but for the fact that the insurers are entitled to avoid or cancel the policy" or "a liability within the risks specified in the policy or which should be within the risks specified in the policy but for the fact that the insurers are entitled to avoid or cancel the policy or are entitled to evade liability". The insurers in the present appeal would require the first alternative meaning in order to sustain their argument, but the learned author prefers the second, submitting that, if the first meaning is to be given to the phrase, "the whole object of this part of the Act would be defeated". Putting it another way (at page 283), Shawcross suggests that a liability covered by the policy means "liability which comes within or arises out of a risk apparently insured by the express terms of the policy, whether or not it is a liability in respect of which the insurers are entitled to refuse an indemnity on the ground that the assured has committed some breach of the terms of the policy". Their Lordships endorse this conclusion which produces the same result as that which is yielded by their Lordships' reasoning.

It appears therefore that, if a third party seeks subrogation to the rights of an insolvent insured under section 17, then section 8 will help him with regard to claims based on death or bodily injury but not with regard to those based on damage to property. The same result will follow under section 17 in cases to which section 12 applies. Where relief is sought under section 10(1), section 8 is irrelevant and the third party can recover with equal success, regardless of whether the claim is based on bodily injury or on damage to property, if the only hurdle is a breach by the insured after the event giving rise to the claim. But, in a case to which section 12 applies, a claim in respect of bodily injury will succeed and one based on damage to property will fail.

This somewhat unsatisfactory result may perhaps not accord with the draftsman's intentions but the language of section 10(1) produces a different result as between section 8 and section 12. It will be for the authorities in Trinidad and Tobago to decide whether amending legislation is called for and, if so, whether claims arising from damage to property should be excluded altogether from the scheme of section 10 or instead placed on an equality with claims arising out of death or bodily injury, following the example of the current legislation in the United Kingdom.

Their Lordships will accordingly dismiss the appeal. The appellants must pay the respondent's costs before their Lordships' Board.