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At p. 391:

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[PART 1

COURT OF APPEAL

May 9 and 10, 1967

FRASER v. B. N. FURMAN
(PRODUCTIONS), LTD.; MILLER,
SMITH & PARTNERS (THIRD
PARTY)

Before Lord Justice WILLMER, Lord Justice
DIPLOCK and Lord Justice WINN

**Insurance brokers—Failure to effect insurance
for client against employers' liability—
Whether insurers would have indemnified
insured—Effect on damages.**

Defendants in action agreed to third party taking over defendants' insurances and third party asked defendants to send it renewal notices when they were received and also the policies. Personal injuries were sustained by F., defendants' employee, while working on an unguarded unfenced machine. F. claimed damages against defendants and defendants claimed to be indemnified by third party, alleging that third party was in breach of contract in failing to effect employers' liability insurance. Third party denied liability, contending that it was only concerned with insurances of which it received renewal notices and no renewal notice was sent to it of defendants' employers' liability insurance. Chapman, J., held (1) that machine had been altered by defendants and that they were in breach of statutory duty; that risk involved in the change was probably not appreciated; and that F. was entitled to £3325 damages against defendants; (2) that third party was in breach of contract in not securing insurance for defendants against employers' liability and defendants were entitled to commensurate damages together with costs payable by defendants to F., and defendants' costs in defending F.'s action. Third party appealed against *quantum* of damages, contending that insurers would have repudiated liability under the policy which

it should have effected and that, therefore, defendants lost nothing. There was evidence that policy would have contained condition:

4. The Insured shall take reasonable precautions to prevent accidents and disease.

Third party further contended that, where agent employed to enter into contract had failed to do so, damages were limited to liability of third party to contract if he had exercised all his legal rights to resist principal's claim.

—*Held*, by C.A. (WILLMER, DIPLOCK and WINN, L.JJ.), (1) that for insurers to repudiate liability (under Condition 4), it was not enough that employers' omission to take any particular precautions to avoid accidents should be negligent, it must be at least reckless, i.e., made with actual recognition by insured himself that a danger existed, not caring whether or not it was averted; (2) that Chapman, J., had found that, on balance of probabilities, defendants did not appreciate danger; and that, therefore, third party's appeal should be dismissed; (*further*) that it was extremely unlikely that insurers would have repudiated liability.

—*Held*, by WINN and WILLMER, L.JJ., that insurance brokers were not "agents" with narrow exemption in favour of agents contended for by third party.

—*Webster v. De Tastet*, (1797) 7 Term Rep. 157, obsolete.

—*Cohen v. Kittell*, (1889) 22 Q.B.D. 680, distinguished.

—*Thomas Cheshire & Co. v. Vaughan Brothers & Co.*, [1920] 3 K.B. 240, distinguished.

The following cases were referred to:
Beauchamp v. National Mutual Indemnity Insurance Company, Ltd., (1937) 57 Ll.L.Rep. 272; [1937] 3 All E.R. 19;
Cheshire & Co. v. Vaughan Brothers & Co., [1920] 3 K.B. 240;