LLOYD'S LIST
LAW REPORTS

Editor :
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CORRIGENDA

VICKERS v. BRITISH TRANSPORT DOCKS BOARD AND DORMAN LONG (STEEL), LTD., [1964] 1 Lloyd's Rep. 275 (Part 7).

At p. 281 the names of Counsel representing the first defendants and the second defendants should be transposed.

BUNTEN & LANCASTER (PRODUCE), LTD. v. KIRIL MISCHEFF, LTD., [1964] 1 Lloyd's Rep. 386 (Part 9).

At p. 392, 8th line from bottom of left-hand column should read

" Arbitration Act, 1950, interest does in "

CASES CITED

CASES CITED—*continued*

CASES CITED—*continued*

CASES CITED—*continued*

CASES CITED—*continued*

CASES CITED—*continued*

STATUTES CONSIDERED

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NOTE:—These Reports should be cited as "[1964] 1 Lloyd's Rep."

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CONTENTS—*continued*

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[1964] VOL. 1] FRIDAY, MARCH 6, 1964 [PART 1

HOUSE OF LORDS

Oct. 10 and 14, 1963

KELLY v. CORNHILL INSURANCE COMPANY, LTD.

Before Lord DILHORNE, L.C., Lord REID, Lord MORRIS OF BORTH-Y-GEST, Lord HODSON* and Lord GUEST*

Motor insurance—Death of insured—Whether permission to drive given by insured continued after his death.

Comprehensive motor insurance effected by appellant's father with respondent insurers on basis that car would not be driven by him but by appellant (named) and other drivers (unnamed) — Provision in policy that any person driving with insured's permission would be insured— Death of insured in June, 1959, but respondents not informed — Eight months after death of insured, appellant involved in accident while driving insured's car (with permission of executrix), resulting in third-party claims amounting to £300 — Claim by appellant to be indemnified under policy rejected by respondents, contending that, although appellant had been given permission to drive car by insured, that permission ceased on insured's death— Appeal by appellant from decision of Inner House reversing decision by Lord Ordinary that case should go to proof.

———*Held*, by House of Lords (Lord DILHORNE, L.C., Lord REID and Lord MORRIS OF BORTH-Y-GEST; Lord HODSON and Lord GUEST *dissenting*), that insured's permission continued after his death and while car remained part of insured's estate (until it was sold by the executor or transferred to a legatee) the permission remained in force, unless the executor, then in control of the car, prevented the permitted driver from driving it; and that, therefore, case should go to proof.

* Dissenting.

The following case was referred to:

Global General Insurance Company v. Finlay and Layng, (1961) S.C.R. 539.

This was an appeal by the pursuer, Kevin Philip Kelly, from an interlocutor of the First Division of the Court of Session, affirming an interlocutor of the Lord Ordinary, Lord Hunter, dismissing his action for a decree of declarator that he was entitled to be indemnified by the defenders, Cornhill Insurance Company, Ltd., in respect of claims brought against him following an accident in February, 1960, while driving a motor car which was owned by his father when he died in June, 1959.

According to the closed record, on Apr. 11, 1958, the pursuer's father, Mr. Michael Kelly, completed and submitted to the defenders a proposal form in respect of insurance by the defenders of his Humber Hawk saloon car (OGE 299). It was stated (*inter alia*) in par. 7 of that proposal form that the car would be driven by a person other than the proposer, namely, Kevin Kelly, the pursuer. The proposer further stated in par. 7 that he did not drive as he had no licence and did not intend obtaining one. That proposal form was accepted by the defenders, and on May 2, 1958, a private car policy of insurance was issued by the defenders to Michael Kelly effective from Apr. 26, 1958, and stating (*inter alia*) that it had been agreed that the proposal form should be deemed to be of a promissory nature and effect, and was the basis of the contract of insurance and incorporated therein. That policy was renewable for 12 months on Apr. 26 of each year, and was so renewed for a period of 12 months by Mr. Michael Kelly on Apr. 26, 1959, and the premium paid.

Sect. A of that policy provided (*inter alia*) as follows:

SECTION "A" PUBLIC LIABILITY. All sums which the Insured shall be legally liable to pay by way of compensation for:—

(a) Death of or bodily injury to any person including any passenger (except when such death or injury arises out of and in the course of the employment of such person by a person insured by this Policy) caused by or arising out of the use of any motor car described in the Schedule (hereinafter called the insured car).

(b) Accidental damage to any property (including animals) not belonging to the Insured or held in trust by him or under his control or charge, caused by the insured car.

In terms of and subject to the limitations of and for the purposes of this Section, this Policy insures:—

(1) any person driving the insured car on the order of or with the permission of the Insured and who has not been refused any motor vehicle insurance or continuance thereof by any Insurer, and

(2) any passenger (which expression does not include a driver or any person who is in charge of the insured car for the purpose of driving) whilst in, mounting into, or dismounting from the insured car.

Excepting always liability in respect of

(*i*) death of or bodily injury to the Insured or the owner or the driver of the insured car or any person in charge thereof for the purpose of driving, and

(*ii*) damage to property being [conveyed] by the insured car or belonging to or held in trust by or in the custody or control of the Insured or of the indemnified passenger.

Provided always that such person:—

(a) is not entitled to indemnity under any other Policy nor would be but for the existence of this Policy, and

(b) shall as though he were the Insured observe, fulfil and be subject to the terms, exceptions and conditions of this Policy.

In the event of the death of any person insured by this Policy the Company will indemnify his estate in respect of any liability incurred by him within the limitations of this Section provided that his personal representatives shall be subject to the terms, exceptions and conditions of this Policy.

Sect. B of that policy provided (*inter alia*):

SECTION "B" ACCIDENTAL AND MALICIOUS DAMAGE. Any damage to the insured car occasioned by accidental external and visible means (including accidents consequent upon mechanical breakdown or wear and tear) up to the estimated value.

There was an indorsement on the policy in the following terms:

MEMO. 2:—

EXCLUDING THE INSURED FROM DRIVING.

It is hereby declared and agreed that this Policy does not apply whilst the insured car is being driven by the Insured personally or is in his/her charge for the purpose of being driven by him/her.

It is further agreed that the indemnity under this Policy permitting the driving of other cars by the Insured is cancelled.

Subject otherwise to the terms, exceptions and conditions of this Policy.

Upon completion of that contract, Mr. Michael Kelly gave the pursuer unlimited permission to drive the motor car.

Mr. Michael Kelly died on June 2, 1959, while the policy and a certificate of insurance issued in terms thereof were in force. The car continued to be the property of the deceased's executrix, and continued to be driven by the pursuer with her consent. On Feb. 4, 1960, while he was driving the car, the pursuer was involved in an accident in England, while the car was being used for pleasure purposes. The car as a result was so damaged as to be valued at £5. In addition, property belonging to third parties was damaged as a result of which claims in excess of £300 were made against the pursuer.

The defenders were not informed of the death of Mr. Michael Kelly until after that accident.

The pursuer brought an action for declarator that under the terms of the proposal form and the policy he was entitled to the benefit of the policy in respect of claims arising out of that accident. The pursuer contended that at the time of the accident he was insured under the policy as a "person driving the insured car . . . with the permission of the Insured".