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CORRIGENDUM

THE "ANTHONY II", [1966] 2 Lloyd's
Rep. 437 (Part 10).

At p. 438, Col. 2, lines 14 to 17 should
read:

Messrs. Bigham, Englar, Jones & Houston
(Warren H. Greene, Jr., Advocate) appeared
as *amicus curiæ* on brief for the libellants.

LLOYD'S LIST LAW REPORTS

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Assistant Editor : G. M. HALL
of the Middle Temple, Barrister-at-Law

[1966] VOL. 2]

FRIDAY, JULY 29, 1966

[PART 1

COURT OF APPEAL

Thursday, May 12, 1966

**BARRATT BROS. (TAXIS), LTD. v.
DAVIES; LICKISS (First Third Party);
MILESTONE MOTOR POLICIES AT
LLOYD'S (Second Third Party)**

Before Lord DENNING, M.R., Lord
Justice DANCKWERTS and Lord
Justice SALMON

Motor insurance—Notice of intended prosecution and summons not forwarded to insurers by assured—Insurers informed by police—Repudiation of liability by insurers—Whether insurers waived condition precedent—Whether insurers could compel assured to have insurers' solicitors.

Third party motor insurance policy was effected by first third party motor cyclist with second third party insurers. Under policy, insurers agreed to indemnify motor cyclist against damage to property and policy provided (*inter alia*):

Sect. 1 (b):

The Underwriters will pay all legal charges and expenses incurred with their written consent in defending any claim under this Section and will at the Insured's request (or may at their option) arrange for and pay the fee of a Solicitor to represent the Insured at any coroner's inquest or fatal inquiry in respect of any death which may be the subject of indemnity under this Section or for defending in any Court of Summary Jurisdiction any proceedings . . .

Condition 1:

The Insured shall give full particulars in writing to MILESTONE MOTOR POLICIES, LONDON HOUSE . . . as soon as possible after the occurrence of any accident,

loss or damage and shall forward immediately any letter, Notice of intended prosecution, writ, summons or process relating thereto. . . .

Condition 13:

The due observance and fulfilments of the terms, provisions, conditions and endorsements of this Policy in so far as they can apply and the truth of the statements and answers in the proposal form shall be conditions precedent to any liability of the Underwriters to make any payment under this Policy.

Motor cyclist collided with defendant's taxi on May 17, 1964, but did not inform insurers until May 25, when he wrote enclosing letter from defendant's solicitors. Insurers had already been informed by defendant's solicitors, and wrote on May 25 to motor cyclist, enclosing claim form, which motor cyclist completed and returned later. Motor cyclist received notice of intended prosecution from police and later a summons returnable on July 2, 1964, but he did not forward them to insurers. Insurers were informed by police on June 18, 1964. On June 23, insurers wrote to motor cyclist:

We understand that proceedings are being taken against you on the 2nd July, in Blackpool Magistrates' Court.

It would be appreciated if you would let us know why you have not notified us of these proceedings since we will wish to arrange your defence.

We await your comments.

On Aug. 10, 1964, insurers repudiated liability, stating that their position had been prejudiced by motor cyclist's action. Defendant's taxi was repaired by plaintiff and plaintiff instituted proceedings claiming cost of repairs from defendant, who joined motor cyclist and insurers as third parties, claiming to be indemnified by them. Motor cyclist claimed to be indemnified by insurers who denied liability, contending that motor cyclist was in breach of condition precedent and that they were entitled to insist on conducting motor cyclist's defence.