

INTERESTING AUTOMOBILE CASE

A case of much interest in Canada, to underwriters of theft insurance on automobiles, was recently decided in the Appellate term of the Supreme Court, New York. Changed numbers on cars figure in a prominent way, and owners recover stolen cars in spite of contention that at date of theft, another party had them licensed.

On November 12, 1919, the police seized and took away from George W. Griffith, a dealer in used cars, at 1700 Broadway, six Ford cars. It was claimed that one of those cars was stolen from Arthur R. Learey on November 5, 1919, and one car from A. Cairns and one from Bernard Weinzimmer, an insurance adjuster, on November 10, 1919. Learey and Weinzimmer claimed that the numbers on those cars were changed, and that the original motor number on the Learey car was 3307001 and was changed to 3352087, and the original motor number on the Weinzimmer car was 3636373 and was changed to 361888.

Those three cars were insured by the Northern Underwriters and after they were identified by the owners, the insurer procured writs of replevin and seized the cars and returned them to the owners.

Claims of Defendant.

Griffith claimed that those cars belonged to him, having bought them in Brownsville, from one Amerling, and he produced bills of sale showing that he bought the Learey car on November 7, 1919, and the Weinzimmer car on October 31, 1919; in other words, that he bought those cars before the dates on which the Learey and Weinzimmer cars were stolen. Amerling stated that he bought those cars on different dates from one Nathan Applebaum, who lives in Brownsville and is engaged in the lamp business in New York, and that Applebaum delivered with the bills of sale the "owners cards" showing the Applebaum was the real owner of those cars.

A representative of the Secretary of State produced records showing application for the insurance of an owner's card for car No. 3,361,888 was made on October 29, 1919, and for car No. 3,352,087 was made on October 29, 1919, showing that Applebaum was the owner of those cars and produced owner's cards for same before the occurrence of the thefts from Learey and Weinzimmer.

Counsel for the Northern Underwriters, however, proved that the numbers which were on the cars at the time when they were seized by the police, and which were registered in the office of the Secretary of State, were fictitious. Testimony to that effect was given by the Ford Motor Car

Company, showing that car No. 3,352,087 was sold by the Ford Motor Car Company to Brazil, and the car was then on its way, on board a ship, going toward that direction, and car No. 3,361,888 was sold to Mr. Johnson of 442 Mulberry street, Newark, and the car was in Mr. Johnson's possession then.

The cases were tried on December 18, before Judge Hoyer in the Municipal Court, and a decision was rendered in favor of the plaintiffs, the assured and the Northern Underwriters; from those decisions Griffith appealed to the Appellate terms of the Supreme Court. Griffith's counsel contended that the evidence of the Secretary of State to the effect that those cars were registered by Applebaum on dates earlier than the occurrence of the theft, is conclusive and absolute proof that they are not the cars which were stolen. It was, however, contended on behalf of the Northern Underwriters, that at the time of the registration with the Secretary of State those cars were not owned or in the possession of Applebaum, but numbers of cars were registered at random in expectation of the stealing of those or other Ford cars, and with the intention of changing the numbers of the cars which would fall in the thieves' net, so as to correspond with the numbers theretofore registered in the office of the Secretary of State.

Fictitious Numbers Shown.

It was further shown that the "motor numbers" of the twenty-six cars which Amerling claimed during the trial to have bought from Applebaum and others, with an owners license on each car, were likewise fictitious numbers. Those cars, according to Amerling's claim, were bought from five different persons in different parts of the city during a period of several months; the motor numbers, however, were practically, more or less, duplications of one another. Three cars had the following numbers: 3014568, 3017567 and 3074567, respectively; of number 2880814 he had two cars, and the "license numbers" of those cars were 223813 and 223831, respectively; in other words, the motor numbers were exactly the same and the license numbers were the same, with the exception that the last two figures were in the first one "13" and in the second one "31," and there were other duplications all through the entire list.

The justices of the Appellate Term did not, in accordance with the usual custom, reserve a decision, but did, on hearing the argument, unanimously affirm the judgment of the Municipal Court.

S. J. Rosenblum and Arthur C. Mandel appeared as counsel for the respondent and J. Lester Fierman appeared as counsel for the appellants.