

HIGH COURT DIVISION.

ORDE, J.

JUNE 14TH, 1920.

***WAMPLER v. BRITISH EMPIRE UNDERWRITERS
AGENCY.**

Insurance (Accident)—Policy Insuring against Loss in Respect of Motor-car—Peculiar Accident not Covered by Terms of Policy—Construction of Policy—Absence of Ambiguity—Conduct of Adjuster—Estoppel—Provision of Policy Guarding against Waiver—Powers of Adjuster—Absence of Authority from Insurers.

Action to recover the loss sustained by the plaintiff in respect of a motor-car upon which he was insured by the defendants.

The action was tried without a jury at Chatham.

J. G. Kerr and J. A. McNevin, for the plaintiff.

A. C. Heighington, for the defendants.

ORDE, J., in a written judgment, said that the car, at the time of the accident, was in charge of a son-in-law of the plaintiff. The plaintiff's daughter and son-in-law were crossing with the car from the mainland to Walpole Island, upon a ferry which was operated by means of a chain. When the ferry reached the island, the son-in-law was told that "it was all right to go ahead," and he proceeded to drive the car off the ferry on to the land. After the front wheels had reached the land, the ferry began to move away, with the result that the car dropped into the water.

One of the defences was that the loss was not covered by the defendants' policy, not having been caused by the stranding, or sinking, or collision, or burning of the ferry-boat from which the car slipped into the water. The accident was a most unusual one. The ferry-boat apparently was insufficiently moored to the shore, and the weight of the car, or the mere act of propulsion in driving it on to the shore, caused the boat to back away.

The learned Judge said that he was unable to see any ambiguity in the policy; and was of the opinion that the peculiar accident which caused damage to the plaintiff's car was not contemplated by the terms of the policy, and was not covered by it.

The plaintiff further contended that, whether liable upon the policy or not, the defendants were estopped by the consent and admissions of their adjuster, Robert Marsh, who was sent to investigate and adjust the plaintiff's claim, and who, it was said, gave certain directions to the repairers as to what was to