

MASTEN, J., reading the judgment of the Court, said that the quantum of the claim was not disputed—if liability existed the plaintiff should have judgment for \$1,181.47.

The correspondence between the parties operated as a waiver of any proofs of loss other than those which were delivered: *Morrow v. Lancashire Insurance Co.* (1899), 26 A.R. 173.

The policy, on its true construction, covered the plaintiff's loss. The policy contained no direct covenant to pay, but did evidence an agreement to insure; and the defendant, in his statement of defence, admitted that the "defendant did enter into a contract of insurance of the plaintiff's automobile, on certain terms and conditions."

The internal evidence afforded by the words of the policy and the manner in which they were printed shewed that the defendants intended to accept liability for loss or damage to the plaintiff's automobile, (A) from fire, (B) "while being transported in any conveyance by land or water," (C) from theft, robbery or pilferage—subject, however, to any exceptions clearly and unambiguously set forth in the subsequent portions of these three clauses; and no such clear and unambiguous exception was set forth in the latter part of clause (B).

But, apart from the form of the policy and the manner in which the words were printed, the inherent probabilities of the case strongly supported the plaintiff's contention; and, if the policy were considered ambiguous and uncertain in its phraseology, the ambiguity was to be resolved against the defendants.

But the clause was not in truth ambiguous. By clause (B), the vehicle was insured "while being transported in any conveyance by land or water—stranding, sinking, collision, burning, or derailment of such conveyance, including general average and salvage charges for which the insured is legally liable." It is the better construction to hold the two parts of this clause to be distributive: that the first clause covers loss arising from the injury to the automobile itself while being transported in any conveyance by land or water; and the second clause provided, in addition, that, even though there was no physical injury to the automobile itself, yet loss arising from general average and salvage charges for which the insured was legally liable were insured against, thus giving full effect to every part of the contract.

As to the action being prematurely brought, an amendment of the defendants' pleadings ought not, in the circumstances, to have been allowed at the trial. The discretion to permit an amendment is to be exercised so as to do what justice may require in the particular case; and it seemed clear in the present case that justice did not require that a technical defence of this kind, which had not been pleaded, ought to be permitted at the trial.