Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of King v. The Victoria Insurance Company, Limited, from the Supreme Court of Queensland; delivered 20th March 1896.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Appellant is a nominal Defendant representing the Government of Queensland in a suit instituted by the Respondents to recover damages under the following circumstances. The Bank of Australasia effected an insurance with the Plaintiffs "at and from Townsville to London "viâ Torres Strait, including risk of fire and "flood from sheep's back until waterborne at "Townsville." The insurance was to be upon goods to be loaded in a vessel not named. In point of fact the goods were wool, and the vessel was called the "Dorunda." The adventure was stated to begin from the loading of the goods on board the vessel. Some of the wool was on arrival at Townsville put on board a lighter belonging to a firm of wharfingers for the purpose of being conveyed to the "Dorunda." While the lighter was moored to the wharf, a storm arose which broke away from their anchorage certain punts belonging to the Government which had not been properly secured. The punts fell foul of the lighter, broke her away from

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her moorings, capsized her, carried her down stream, and so destroyed or damaged the wool. The Bank claimed against the Plaintiffs under the policy for a loss of 920*l*. The Plaintiffs paid that amount and took a formal assignment from the Bank of all their rights and causes of action against the Government, the Bank stipulating that the assignment should not authorise the use of their name in legal proceedings.

By way of defence the Government denied negligence and liability altogether. That question was fully tried at Townsville before Mr. Justice Cooper and a special jury, who found to the effect above stated, with the result that judgment was entered for the Plaintiffs for 1,007*l*. and costs.

The Government have not further contested the question of negligence, but on a motion to set aside the judgment they raised two objections. One related only to the amount of damages, and in that they partially succeeded. The other was to the effect that the Plaintiffs had no right of action, or at any rate none in their own name; because the loss was not within the risks covered by the policy, and because the assignment of a mere right to recover damages was illegal.

The view taken by the Supreme Court was that the Plaintiffs were not, by the mere fact of paying the claim, subrogated to the rights of the Bank. They thought that the damage done to the wool was not within the terms of the policy. The wool was not loaded on board ship and therefore was not within the clause which makes the risk, or one of the risks, begin from that event. Whether the learned Judge thought that the placing of the wool on board a wharfinger's lighter in the general course of trade at Townsville satisfied the term "water-"borne," and so ended one risk or part of the risk, is not clear. At any rate the Chief Justice

thought that the risk "from sheep's back until "waterborne" which is expressed to be included in the risk from Townsville to London, did not attach because the Jury had found that the loss was caused by collision and not through fire or flood. Assuming that the Plaintiffs were bound to pay, the Court held on the authority of *Simpson* v. *Thomson*, 3 Ap. Cas. 279, that they could not by mere force of subrogation sue in their own names. But they held that this right was conferred by the Bank's express assignment, aided by the terms of Section 5 Sub-section 6 of the Judicature Act, 40 Vict. cap. 86. That Act follows exactly the English Judicature Act of 1873. The learned Judges below consider that the term "legal chose in action" includes all rights the assignment of which a Court of Law or Equity would before the Act have considered lawful, and that the right in question is a right of that kind. On those grounds they sustained the judgment except as to the amount of damages.

The Government have now appealed to Her Majesty in Council claiming that the suit shall be dismissed. They argue that the loss sued on was not within the terms of the insurance; that the Plaintiffs stand in the position of mere strangers making a voluntary payment to the Bank, and bringing a lawsuit; and that they have got no title which a Court either of Law or of Equity would recognize. They make the subordinate objection that the Plaintiffs cannot sue in their own name; but Mr. Cohen's arguments go the whole length of denying that the Plaintiffs acquired any right at all; and indeed in the face of the Judicature Act they must go that length in order to sustain the subordinate objection.

To their Lordships it seems a very startling proposition to say that when insurers and insured have settled a claim of loss between themselves, a third party who caused the loss

may insist on ripping up the settlement, and on putting in a plea for the insurers which they did not think it right to put in for themselves; and all for the purpose of availing himself of a highly technical rule of law which has no bearing upon his own wrongful act. It is not alleged that there was anything but perfect good faith in the claim made by the Bank and satisfied by the Insurance Company. It is not alleged that the question of negligence has not been as fully and fairly tried in this action as it could have been in an action by the Bank; or that the Government has been in any way prejudiced by the form of the action. But it is claimed as a matter of positive law that, in order to sue for damage done to insured goods, insurers must show that if they had disputed their liability, the claim of the insured must have been made good against them. If that be good law, the consequence would be that insurers could never admit a claim on which dispute might be raised except at the risk of finding themselves involved in the very dispute they have tried to avoid, by persons who have no interest in that dispute, but who are sued as being the authors of the loss. The proposition is, as their Lordships believe, as novel as it is startling; at least Mr. Cohen was unable to furnish any authority for it, and they know of none. Yet it is difficult to suppose that such cases have not frequently occurred.

As regards the question whether the loss was or was not within the terms of the policy, their Lordships will make no observation but this, that whatever might have been the result of a dispute between the parties to it, there is nothing to suggest that the claim was not one which the insured might not honestly and reasonably make, or to which the insurers might not honestly and reasonably accede. They will assume, as the Court below has assumed, that

the Bank could not by the terms of the policy have compelled the insurers to indemnify them. Still if, on a claim being made, the insurers treat it as within the contract, by what right can a stranger say that it is not so? The payment would not be made if no policy existed; and it seems to their Lordships an extravagant thing to say that a payment made under such circumstances is a voluntary payment made by a stranger, and that it would be at least an excess of refinement to hold that it is not a payment on the policy, carrying with it the legal incidents of such a payment. Such settlements of claims between the parties concerned ought not to be reopened for a by-purpose at the instance of parties not concerned. To hold otherwise would convert rules of law framed for the purpose of checking speculations in lawsuits into instruments for promoting lawsuits which the parties interested are wise enough to avoid by agreement. Their Lordships have no doubt that if, after receiving payment from the Plaintiffs, the Bank had got damages from the Government, a Court of Equity would have treated them as trustees for the Plaintiffs to the extent of the payment, nor that if it had been necessary to use the name of the Bank a Court of Equity would have compelled the Bank to permit it on the usual terms. Mr. Cohen says that no instance is to be found in the reports where the Court of Chancery has bound a Defendant to give his name to be used in an action of tort. Nevertheless it cannot be doubted that insurers often have used the names of the insured to recover damages in tort, and have not heeded whether the payment made on their contracts of indemnity did or did not fall within their strict terms. If the reports are silent, the more probable explanation is that the kind of defence raised in the present case has not commended itself to lawyers.

It is true that subrogation by act of law would not give the insurer a right to sue in a Court of Law in his own name. But that difficulty is got over by force of the express assignment of the Bank's claim, and of the Judicature Act, as the parties must have intended that it should be when they stipulated that nothing in the assignment should authorize the use of the Bank's name.

Their Lordships do not express any dissent from the views taken in the Court below of the construction of the Judicature Act with reference to the term "legal chose in action." They prefer to avoid discussing a question not free from difficulty, and to express no opinion what limitation, if any, should be placed on the literal meaning of that term. They rest their judgment on the broader and simpler ground that a payment honestly made by insurers in consequence of a policy granted by them and in satisfaction of a claim by the insured, is a claim made under the policy, which entitles the insurers to the remedies available to the insured. On this view the highly artificial defence of the Queensland Government fails, and the appeal must be dismissed with costs.

Their Lordships will humbly advise Her Majesty in accordance with this opinion.