Document generated on 12/13/2024 9:29 a.m.

Assurances

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Chronique de jurisprudence

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Volume 19, Number 3, 1951

URI: https://id.erudit.org/iderudit/1103217ar
DOI: https://doi.org/10.7202/1103217ar

See table of contents

Publisher(s)

HEC Montréal

ISSN

0004-6027 (print)
2817-3465 (digital)

Explore this journal

Cite this document

P., G. (1951). Chronique de jurisprudence. *Assurances*, *19*(3), 129–135. https://doi.org/10.7202/1103217ar

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Chronique de jurispudence

par

G. P.

I. — Le cas de l'explosion suivie d'un incendie.

Un réservoir fait explosion, des gaz s'en dégagent. Pour une cause qu'il est impossible de définir exactement, une grave explosion s'ensuit, puis un incendie. L'assureur qui garantit le réservoir en vertu d'une police contre l'explosion, est-il responsable de tous les dommages ainsi causés ? Voici quelques extraits d'un jugement rendu à ce sujet par le comité judiciaire du Conseil privé, dans la cause de *Boiler Inspection and Insurance Company of Canada* v. *The Sherwin-Williams Company of Canada Ltd.* La cause est assez complexe, mais nous voulons simplement ici évoquer un aspect qui nous paraît particulièrement intéressant:

a) La police contient la clause ordinaire suivante:

« *Section 1. To pay the assured for loss on the property of the assured directly damaged by accident, excluding* (*a*) *loss from fire* (*or from the use of water or other means to extinguish fire*); (*b*) *loss from an accident caused by fire;* (*e*) *loss from any indirect result of an accident* »;

b) Quant à la cause du sinistre, voici l'opinion exprimée par un expert, auquel le tribunal accorde une grande importance:

« *If this be, as their Lordships believe, the true view, then the matter is concluded by the evidence of Dr. Lipsett which was accepted by the learned Judge who tried the case. It would be a miracle, he said, if the vapour did not explode*

when it was released in the circumstances then existing. When one is considering only whether the explosion was the direct result of the tearing asunder of the tank, and disregarding the question whether the exception of fire from the risk frees the appellants from liability, it matters not that the escaping fumes required to be mixed with air before they became explosive or that some source of ignition was required. Both these steps were the natural, indeed almost the inevitable, consequence of the original rupture, and therefore its direct result.

130

There remains the more difficult question whether the exclusion of loss from fire prevents the respondents from recovering. Undoubtedly no explosion would have taken place without some source of ignition. One suggested source was the heated door of the tank. Mr. Lipsett thought this a possible method of ignition in as much as if heated to 484 degrees it would have reached a temperature high enough to ignite the gas. But he regarded this result as unlikely, and thought the learned Judge speaks of an unascertained source of ignition, he does, their Lordships think, consider that the most probable cause was a spark or gas jet or open fire in a grate. He does not in terms reject the heated door, but regards it as an unlike cause of the ignition of the vapour.

Some cause of the ignition there must have been and the appellants maintain in the first place that the loss was due to fire, if the combustible material was ignited by any spark or flame and broadly that a combustion explosion as a rule is caused by fire. In the particular case under consideration however they maintain that they are on even firmer ground in that some of the respondent's witnesses did say that they saw fumes of vapour followed by fire or a flash like fire at the two doors. In their submission there was a fire raging in the room for some appreciable time before the final explosion took place.

In either case there is, as the learned Judge recognizes, in some sense fire unless the unlikely cause of ignition was the heated door. An electric spark, a naked gas jet, an open fire are still fire, though they may not be fire within the exceptions contained in the policy. Still more plainly fire was at least an element in the disaster which occurred if the true view be that there was for an appreciable period of time a burning of the gases before the ultimate explosion took place. »

c) Les dommages causés par l'incendie ne sont pas garantis, toutefois. La « causa proxima » des dommages, c'est-à-dire la cause immédiate, c'est la présence des gaz:

« *If fire were the risk insured against it might well be that an explosion in which fire played a part was covered, but, when it has to be determined whether the tearing asunder of the tank or the ignition of the gases thereby released is the cause of the explosion and of the loss which it occasions, their Lordships have no hesitation in choosing the former.*

But, it is said, if the accident to the tank was the cause of the explosion it was also the cause of the subsequent fire and logically therefore the appellant would be liable for all the damage including that done by the fire.

This result would no doubt follow if there were no exception of fire, but fire is excepted. Such an exception is unnecessary if fire alone caused damage since fire is not insured against.

d) Et voici la conclusion du Conseil privé:

« *In their Lordships' view the appellants are not absolved from liability for the damage due to the explosion by reason of the exception of fire.* »

Boiler Inspection and Insurance Company of Canada v. The Sherwin-Williams Company of Canada Ltd. Judicial Committee of the Privy Council.

II. — Sens du mot accident en responsabilité civile.

Par une police d'assurance contre les accidents, la Canadian Indemnity Company assure Andrews & George Company, Ltd. contre les dommages matériels causés aux tiers. Voici les clauses d'assurance:

« *To indemnify the insured against the liability imposed by the law upon the insured for damage to or destruction of property of others caused by accident (during the policy period) and arising out of the handling or use of or the existence of any condition in merchandise products or containers manufactured, sold or handled by the insured after the insured has relinquished possession of such merchandise products or containers to others and away from premises owned by, leased to or controlled by the insured.*

This policy shall not cover: Exclusions:

(*a*) *Damage to or destruction of property where the insured has assumed liability therefor under the terms of any contract or agreement;*

(*b*) *Damage to or destruction of property owned, leased to or occupied or used by or in the care, custody or control of the insured;*

(*c*) *Damage to or destruction of property arising out of pickup delivery and the existence of tools, uninstalled equipment and abandoned or unused materials;*

(*d*) *Damage to or destructing of the merchandise, products, containers or completed work out of which the occurrence arises.*

La maison Andrews & George fournit de la colle à une de ses clientes, qui l'utilise pour ses produits. A cause de la mauvaise qualité du produit, qui semble inexplicable, la cliente a des dommages s'élevant à $9,159.79. La maison Andrews & George paie le montant et le réclame de la Cana-

dian Indemnity, en vertu de sa police. La Cour suprême de la Colombie Britannique conclut ainsi:

a) qu'il s'agit bien d'un dommage accidentel. Voici les notes du juge à ce sujet:

« *The first point that is necessary for me to consider is whether or not under the circumstances, the defect in the glue in question was caused by accident. There would seem to be no doubt that the plaintiffs, in manufacturing the glue, had generally followed the process used in the manufacturing of previous batches of glue which has turned out satisfactorily and one is only left to speculate as to what might have occurred in the manufacturing to cause the defect. Certainly, to me, it remains an unexplained mystery.*

The defendants relied on the fact that such circumstances could not be classified as an accident and cited in support thereof Hamilton v. Pandorf. (1887) 12 A.C. 518; Wilford's Accident Insurance, 2nd edition, page 273, paragraph 2; and Sloboda v. Continental Casualty Co., (5 I.L.R. 136, 270); (1938) 2 W. W. R. 237.

I think the words of Lord Halsbury, L.C. in Hamilton v. Pandorf, supra at p. 524, clearly summarizes the law as to the meaning of « accident ». I quote:

I think the idea of something fortuitous and unexpected is involved in both words, « peril » or « accident ».

Fortuitous is described as a « chance happening ».

b) qu'il y a entre celui qui fournit le produit et celui qui l'utilise un contrat. Voici ce que le juge dit à ce sujet:

« *The plaintiffs' only liability to the purchaser of the glue was by virtue of their entering into a contract to supply the glue, the term in the contract implied by law being that the glue would be fit and suitable for the purpose sold* ».

c) que, par conséquent, l'exclusion relative aux engagements pris par contrat s'applique:

« *I can only come to the conclusion that, in this case, the plaintiffs assumed liability for the damage to the goods in question by entering into the contract for the sale of such goods and, under the terms of which contract, there was by law, an implied warranty and that any such damage is excluded from the policy under exclusion clause (a) supra.*

To hold otherwise would be to find that the insurance company was guaranteeing the quality of the goods of the insured which, to my mind, was never in the contemplation of the parties. »

Il sera intéressant de voir ce qu'il adviendra de ce jugement s'il est porté à la Cour Suprême du Canada. Il y a là, en effet, deux points extrêmement importants en assurance contre la responsabilité civile. Le premier a trait au sens à donner au mot « accident » qui, dans la pratique, n'a pas celui de tout événement survenant à l'occasion du risque garanti, mais simplement d'un cas fortuit. Le second a trait à l'engagement que prend un fabricant en vendant son produit à un tiers. Il nous semble que le fabricant de colle ne prendrait un engagement correspondant à un contrat, que si, après examen du problème que son acheteur lui soumet, il acceptait la responsabilité de son produit si celui-ci ne rendait pas à l'acheteur le service que celui-ci en attend. Dans le cas présent, si on admet le caractère accidentel du dommage, il nous semble qu'on devrait reconnaître le droit de l'assuré à être indemnisé pour le dommage qu'il a causé au tiers. D'un autre côté, la discussion pourrait porter sur le fait qu'il ne s'agit pas d'un accident, mais simplement d'un vice ou d'une erreur de fabrication que l'assureur ne s'engage pas à garantir. Il y a là un point très important que l'assureur ne pour-

rait éviter si sa police contenait le mot « *event* » ou « *occurrence* » au lieu d'*accident*.

Si l'assureur consent à mentionner ce mot dans le cas de dommages corporels, il s'y oppose pour les dommages matériels et surtout lorsqu'il s'agit de la responsabilité du fabricant.

Il y a là une nuance très importante, qui embarrasse beaucoup le courtier avant le sinistre et l'assuré subséquemment. Tant qu'on n'aura pas tranché la question définitivement, le contrat sera incomplet.

Andrews & George Company Ltd. v. The Canadian Indemnity Company. B.C. Supreme Court. 14-12-50.