[BOURKE, C.J. and ZEKIA, J.]

THE POLICE

Appellants

v.

1. JOHN MARTIN BARNES
2. ANDEAS PANAYIOTI PANIKKOU

Respondents.

(Case Stated No. 123)

1958
June, 3, 11

THE POLICE
v.
JOHN M. BARNES AND ANOTHER

Motor Traffic—Motor Vehicle—Insurance against third party risks—Using motor vehicle without being covered by insurance—Motor Vehicles (Third Party Insurance) Law, 1954, section 3.

Insurance against third party risks—Insurance certificate—Construction—Question for the Court—Opinion evidence as to construction inadmissible.

Insurance against third party risks—Insurance certificate—Secondary evidence of its contents—Admissible without notice to produce.

The two respondents were charged respectively with the offences of using and permitting the use of a motor vehicle on a road without being covered by an insurance policy against third party risks, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, 1954. The trial Judge rejected as inadmissible secondary evidence of the contents of the insurance certificate by the police officer who perused it, on the ground that it was for the prosecution to produce the insurance policy or to lay the foundation for secondary evidence to be offered on its terms. The trial Judge also rejected evidence by the police officer to the effect that in his opinion, the insurance policy did not cover the user of the motor vehicle at the material time, and, in the absence of any evidence as to the extent of the cover, he held that the prosecution failed to establish a prima facie case against the two respondents.

Held : (1) that it was for the Court to construe the insurance policy, a police witness could not express an opinion as to its construction;

(2) that secondary evidence of the contents of the insurance certificate may be given if the accused does not produce it in Court as notice to produce the policy is not required.

Williams v. *Russell* (1933) 97 J.P. 128, *followed.*

Order of acquittal set aside. Case remitted to Lower Court to hear the evidence and proceed with the trial according to law and in the light of this decision.

Cases referred to :

(1) *Edwards* v. *Griffiths* (1953) 2 All E.R. 875.

(2) *John* v. *Humphreys* (1955) 1 All E.R. 793.

(3) *R.* v. *Oliver* (1943) 2 All E.R. 800.

(4) *Williams* v. *Russell* (1933) 97 J.P. 128.

Case Stated.

Case stated by Morgan, Justice of the Special Court, on the application of the Attorney-General. The two respondents, John Martin Barnes and Andreas Panayiotis Panikkou, both of Nicosia, were acquitted on the 22nd April, 1958, respectively of the offences of using and permitting the use of a motor vehicle on a road without being covered by an insurance policy against third party risks, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, 1954 (Case No. 55/58, Special Court, Limassol).

R. Grey for the appellants.

Respondent No. 1 in person.

G. Cacoyiannis for respondent No. 2.

The facts of the case sufficiently appear in the judgment of the Court which was delivered by :

BOURKE, C.J. : This is a case stated at the instance of the Attorney-General by the Justice of the Special Court at Limassol. It arises out of proceedings in which the two respondents were respectively charged with the offences of using a motor car on a road without a policy in respect of third party risks and permitting the use of the motor car without the cover of such a policy, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, 1954. The Court came to the conclusion that there was no case made out to answer and the respondents were acquitted.

It appears that evidence was led going to establish that the first respondent Barnes was driving the vehicle on the day and place as alleged and that he did so with the permission of the second respondent. It appears that Barnes

produced a certificate of insurance against third party risks to a witness, Police Sergeant Hawkins, who returned it after perusal. The question that arose was whether the insurance extended to cover the user of the motor vehicle by Barnes. It was contended for the prosecution that when the certificate was examined by this Police witness, he formed the conclusion that the cover did not extend to Barnes when driving the vehicle. Objection was taken to the admissibility of evidence to this effect and the objection was upheld. It appears that objection to secondary evidence of the contents of the document was also sustained. In the absence of evidence as to the extent of the cover it was held that the prosecution had failed to make out a *prima facie* case. The learned Justice has given his reasons in the case stated as follows :-

"(a) before secondary evidence is offered, a foundation for it must first be laid, by proving that evidence at first hand cannot be obtained. The best evidence of the contents of a deed or other written instrument is the written instrument itself (Archbold 33rd Ed. p. 386—7 : p. 388 R. v. Kitson, Dears 187 : Contra first sentence para. 640).

(b) it having been established by evidence, that there was a valid policy of insurance covering third party risks, it was for the prosecution to produce the policy, or to lay the foundation for secondary evidence to be offered on the terms of the policy.

(c) it was for the Court to construe the policy, and the views of a police witness on its terms, could not be led in evidence.".

There can be no doubt that given evidence of the terms of a policy it is for the Court to decide whether the insurers would have been on risk if there had been an accident and it would not rest with the Police witness to express an opinion going to construction; if authority be needed for that obvious proposition, which indeed has not been questioned in argument before this Court, reference may be made, for instance, to *Edwards* v. *Griffiths* (1953) 2 All E.R. 875. Again before this Court it was not disputed that it was open to the Police witness to give secondary evidence of

the contents of the certificate. We are of opinion that the law is correctly stated in Wilkinson, On the Road Traffic Acts, 2nd edn., p. 116, as follows :-

> "Notice to produce the policy is not required and evidence may be given by a policeman who saw the insurance certificate of its terms, if the defendant does not produce it in court (Williams v. Russell (1933) 97 J.P. 128; Machin v. Ash (1950) 94 Sol. J. 705). John v. Humphreys (1955) 1 All E.R. 793 shows that the onus of proving possession of a policy is on the defendant.".

In *John* v. *Humphreys* it was a matter of a driving licence but the principle is the same when it comes to a policy and in that case *R.* v. *Oliver* (1943) 2 All E.R. 800, was applied. In *Williams* v. *Russell* it was proved that the respondent was driving a motor van carrying several persons as passengers, when he was stopped by a constable, and that on being stopped he produced a certificate of insurance, of which the constable took particulars. It was alleged that the certificate did not cover the conveyance of passengers. At the hearing before the justices the constable was about to give evidence of the contents of the certificate, but objection was taken on behalf of the defendant that, as no notice to produce had been given, secondary evidence of the contents of the document was not admissible. The Justices upheld the objection, and as there was no other evidence against the respondent, dismissed the information. It is only necessary to quote the judgment of Lord Hewart, C.J. :-

> "In my opinion this appeal ought to be allowed. I think the Justices ought to have heard the evidence which the police officer was offering to give. I think the matter is concluded by Marshall v. Ford (21 Cox C.C. 731; 99 L.T. Rep. 796) and Martin v. White (22 Cox C.C. 236; 102 L.T. Rep. 23; (1910) 1 K.B. 665). This view involves no hardship on the accused person, because the certificate was in his possession, and if the policy was not actually in his possession, it was, according to the evidence, easily accessible. He knew that the information was for using this vehicle without there being a proper policy in force in respect of that user, and it must have been obvious that the policy would be required.

I think the case ought to go back with a direction to hear the evidence.".

We think that authority supplies the complete answer to the question now under consideration. We set aside the order of acquittal and send the case back with a direction to hear the evidence and proceed with the trial in accordance with law and in the light of this decision.

Case remitted to Lower Court for trial.