

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of J. C. Thompson v. The Equity Fire Insurance Company and The Union Bank of Canada, from the Supreme Court of Canada; delivered the 15th July 1910.

PRESENT AT THE HEARING.

LORD MACNAGHTEN.

LORD ATKINSON.

LORD SHAW.

LORD MERSEY.

[DELIVERED BY LORD MACNAGHTEN.]

The Appellant, J. C. Thompson, was the owner of a building in New Liskeard, Ontario, which was insured against fire with the Respondents, the Equity Fire Insurance Company. On the 4th of September 1906 the building was burnt down. A claim was made under the policy. It was resisted on various grounds which have all been disposed of but one. The only question remaining is whether the policy was avoided by reason of the presence on the premises at the time of the fire of a small quantity of gasoline.

The statutory condition on which the Insurance Company relies declares that :—

“The Company is not liable . . . for loss or
“ damage occurring while . . . gasoline . . .
“ is . . . stored or kept in the building
“ insured.”

The facts of the case are not in dispute. The lower part of the building was used by Thompson as a drug store and furniture shop. He had an assistant named Post, a qualified chemist and druggist. Post and his family occupied the upper part of the building as a dwelling-house. In June 1906, Post procured a gasoline stove for cooking purposes. He used it for a short time and then put it by with the gasoline which happened to be in it.

On the day of the fire some syrups were wanted in a hurry. The man who usually made them and always made them by what is called the cold process was absent. Post bethought him of this disused stove, brought it downstairs with the gasoline in it, and lighted it in a room behind the shop in order to make the syrups he required by the more rapid process of boiling. And then in some way which is not ascertained—for the stove was in the back room and Post was in the shop at the moment—the fire broke out suddenly. It was caused, no doubt, by this gasoline stove.

The question is: Did the loss occur while gasoline was “stored or kept” in the building. It is common ground that there was no gasoline in the building but what was in the stove, and it seems that the quantity of gasoline in the stove was about a pint.

What is the meaning of the words “stored or kept” in collocation and in the connection in which they are found? They are common English words with no very precise or exact signification. They have a somewhat kindred meaning and cover very much the same ground. The expression as used in the statutory condition seems to point to the presence of a quantity not inconsiderable or at any rate not trifling in amount, and to import a notion of warehousing or depositing for safe custody or keeping in

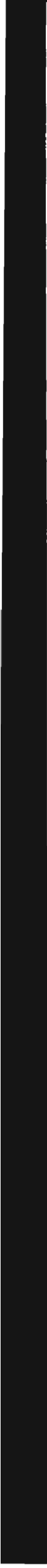
stock for trading purposes. It is difficult, if not impossible, to give an accurate definition of the meaning, but if one takes a concrete case it is not very difficult to say whether a particular thing is "stored or kept" within the meaning of the condition. No one probably would say that a person who had a reasonable quantity of tea in his house for domestic use was "storing or keeping" tea there, or (to take the instance of benzine which is one of the proscribed articles) no one would say that a person who had a small bottle of benzine for removing grease spots or cleansing purposes of that sort was "storing or keeping" benzine.

The learned Counsel for the Respondent contended that the presence of gasoline on the premises was enough to bring the statutory condition into operation, and he referred to the accident which did happen as an example of the danger against which precautions are required. But it is obvious that the danger guarded against is not ignition caused by the article itself but the risk of spreading or increasing the conflagration when once started and in progress by the presence of highly inflammable or explosive material. The fact that the fire in the present case was caused by the gasoline is irrelevant. And the fatal objection to the Defendant's contention is that it gives no effect whatever to the words "stored or kept." The sentence would be complete and the meaning which the Defendant seeks to attribute to it might possibly or even probably prevail if the words in question had been omitted altogether and the condition had excluded liability for "loss or damage occurring while . . . gasoline . . . is . . . in the "building insured." Some meaning must be given to the words "stored or kept." Their Lordships think those words must have their ordinary meaning. So construing them their

Lordships come to the conclusion that the small quantity of gasoline which was in the stove for the purpose of consumption was not being "stored or kept" within the meaning of the statutory condition at the time when the loss occurred.

A good many cases were cited in argument from English, Canadian, and American books. But on such a question as this very little help is to be got from the citation of reported decisions. For the most part the language to be construed was not the same. When the language was similar the circumstances were very different.

Their Lordships will therefore humbly advise His Majesty that the order appealed from should be reversed and the Plaintiff's claim allowed with costs here and below.



In the Privy Council.

J. C. THOMPSON

v.

THE EQUITY FIRE INSURANCE
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