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Charles L. Fulton

rule of evidence which prohibits the use of such admissions and confessions as hearsay.[8] But this "mere codification" idea gets out of hand when the court goes on to hold that the admissions and confessions of one defendant are competent for purposes of corroboration simply because this is also the usual rule.[9] Second, the holding might be justified upon an examination of the theory behind the use of previous consistent statements for purposes of corroboration. Such statements are available to establish the credibility of the witness, not as substantive evidence to prove the fact asserted in the confession,[10] and on this basis it might be argued that they are not used against the defendant. But this is pure theory. The practical result of such a practice is to use them against the defendant if, without them, the witness will not be believed by the jury.[11] Third, the court in its haste to see justice done might have felt the objection more technical than substantial. Since the defendant could not show he was prejudiced by the testimony (how could he ever show prejudice in such a case?), the verdict was not to be overturned. But the statute is clear. If it has been disregarded, this alone is reason enough to grant a new trial.[12]

JAMES L. TAPLEY.

Insurance—Automobile Liability Policy—Scope of Loading and Unloading Clause

The question of coverage afforded under "loading and unloading" clauses in automobile insurance policies has been a center of controversy since the inception of such contracts.[1] The usual policy of this type contains a liability clause for injuries sustained from accidents "arising out of the ownership, maintenance or use" of the vehicle, with "use" further defined to include "loading and unloading."

In *London Guarantee & Accident Co. v. C. B. White and Bros.*[2] the Supreme Court of Appeals of Virginia brings to focus the disputations

[8] Commonwealth v. Epps, 298 Pa. 377, 148 Atl. 523 (1930); State v. Allison, 175 Minn. 218, 220 N. W. 563 (1928); 4 WIGMORE, EVIDENCE §1076 (3rd ed. 1940).

[9] 4 WIGMORE, EVIDENCE §§1125-1126, 1131 (3rd ed. 1940); STANSBURY, NORTH CAROLINA EVIDENCE §52 (1946 ed.).

[10] STANSBURY, NORTH CAROLINA EVIDENCE §§51, 52 (1946 ed.).

[11] Justice Stacy dissented vigorously in the principal case, saying pointedly that the suggestion that Miss Wooten's testimony was not offered against the defendant "has at least the merit of novelty."

[12] Hooper v. Hooper, 165 N. C. 605, 81 S. E. 933 (1914); Broom v. Broom, 130 N. C. 562, 41 S. E. 673 (1902); State v. Gee, 92 N. C. 756, 762 (1885); State v. Ballard, 79 N. C. 627 (1878).

[1] For other discussions on this problem of coverage see Gibson B. Witherspoon, *What Protection Is Afforded Under the "Loading and Unloading" Clause of an Automobile Insurance Policy?*, 52 COM. L. J. 58 (1947); see Note, 160 A. L. R. 1259 (1946).

[2] 49 S. E. 2d 254 (Va. 1948).

in which courts have engaged with regard to these clauses. In the instant case the plaintiff had contracted to deliver coal to the defendants and used a truck covered by the described policy. The truck deposited the coal at the curb, left the scene of delivery, and was some 100 feet away on the return trip when a pedestrian on the sidewalk fell over a lump of coal and injured herself. It appears that the coal was not left on the sidewalk by the truck, but had been thrown there by employees of the plaintiff who were completing the delivery by shoveling the coal from where it had been dumped through an opening in the sidewalk into the purchaser's coal bin.

The court, in determining whether this accident was covered by the policy, could have followed either of two basic theories—the "coming to rest" doctrine or the "complete operation" doctrine. The court chose the latter, concluding that the shoveling was an integral part of the unloading process.[3]

Before liability can be imposed[4] under either of the above theories the court must be satisfied that there is sufficient causal connection between the accident and the vehicle used.[5] Generally the accident is held within the scope of the clause if the loading or unloading was an efficient factor, and in the absence of some substantial intervening force bearing no direct relation to the truck this requirement creates no serious problem to the imposition of liability.[6]

All courts profess to apply the usual canons of construction of insurance policies while considering those of the type in question. They agree that the intent of the parties is to be ascertained, that if the words are unambiguous they are to be taken in their usual and ordinary sense, and that clauses indefinite as to their exact meaning should be construed

[3] London Guarantee & Accident Co. v. C. B. White & Bros., 49 S. E. 2d 254, 258 (Va. 1948).

[4] In a majority of the cases the courts require that two questions be answered in the affirmative before holding the insurer liable: (1) Did the accident occur during the unloading?; (2) was the unloading the proximate cause of the accident? However, where the unloading creates the condition causing the injury or starts the force producing the injury, it is not necessary that the accident happen during the unloading to allow the insured to recover. Therefore it follows that the answer to the second question ultimately determines whether or not there will be liability.

[5] Maryland Casualty Co. v. United Corp. of Mass., 35 F. Supp. 570 (D. C. Mass. 1940); Pacific Automobile Ins. Co. v. Commercial Casualty Ins. Co., 108 Utah 500, 161 P. 2d 423 (1945) ("must be some causal relation between the use of the insured vehicle as a vehicle and the accident for which recovery is sought"); Handley v. Oakley, 10 Wash. 2d 396, 116 P. 2d 833 (1941).

[6] Maryland Casualty Co. v. Cassetty, 119 F. 2d 602 (C. C. A. 6th 1941) (Court allowed recovery where person fell on coal which truck had dumped on sidewalk, saying, "If the coal hadn't been unloaded, presumably she wouldn't have been injured."); B. & D. Motor Lines v. Citizens Casualty Co., 181 Misc. 985, 43 N. Y. S. 2d 486 (N. Y. City Ct. 1943), *aff'd*, 267 App. Div. 955, 48 N. Y. S. 2d 472 (1st Dep't 1944), *motion for leave to appeal denied*, 268 App. Div. 755, 49 N. Y. S. 2d 274 (1st Dep't 1944); Wheeler v. London Guarantee & Accident Co., 292 Pa. 156, 140 Atl. 855 (1928).

in favor of the insured.[7] Since some of the courts approve the "coming to rest" doctrine and others approve the "complete operation" doctrine, it follows that the courts are either applying in different jurisdictions these canons of construction in different ways, or are allowing some other factor to determine which theory they will adopt.

The "coming to rest" doctrine includes within the insurance coverage only those acts comprised in the removing of the goods from the truck until they come to rest, and until every connection of the motor vehicle with the process of unloading[8] has ceased.[9] It distinguishes between unloading and delivery,[10] and stresses such factors as the time elapsed between the unloading and the accident, and the actual relation of the truck to the accident. The "complete operation" doctrine omits for all practical purposes any distinction between unloading and delivery,[11] and holds that the policy applies at all times until the goods are delivered to the place of final destination.[12]

While the distinction between the two doctrines is readily apparent, logical bases to support each are not so apparent. The grounds supporting the "coming to rest" doctrine are pretty clearly spelled out in the cases adopting it, but the reasons for the trend toward the "complete operation" doctrine are not so obvious and merit examination. What appeals to the writer as being the soundest of the theories which have led a majority of the courts toward following the "complete operation" doctrine can be briefly summarized as follows: The delivery of the goods

[7] American Casualty Co. v. Fisher, 195 Ga. 136, 23 S. E. 2d 395 (1942). Cases are not in accord as to whether "loading and unloading" is ambiguous. *Compare* Bobier v. National Casualty Co., 143 Ohio St. 215, 54 N. E. 2d 798 (1944), *with* Zurich Gen. Accident & Liability Ins. Co. v. American Mut. Liability Ins. Co., 118 N. J. L. 317, 192 Atl. 387 (Sup. Ct. 1937).

[8] Both doctrines apply to "loading" as well as to "unloading." These two aspects will be considered separately.

[9] Maryland Casualty Co. v. United Corp. of Mass., 35 F. Supp. 570 (D. C. Mass. 1940); Ferry v. Protective Indemnity Co., 155 Pa. Super. 266, 38 A. 2d 493 (1944); Stammer v. Kitzmiller, 226 Wis. 348, 276 N. W. 629 (1937).

A leading statement of the doctrine appears in *Stammer v. Kitzmiller:* "Where the goods have been taken off the automobile and have actually come to rest, when the automobile itself is no longer connected with the process of unloading, and when the material which has been unloaded from the automobile has plainly started on its course to be delivered by other power and forces independent of the automobile and the actual method of unloading, the automobile may be said to be no longer in use."

[10] St. Paul Mercury Indem. Co. v. Standard Accident Ins. Co., 216 Minn. 103, 11 N. W. 2d 794 (1943); American Oil & Supply Co. v. U. S. Casualty Co., 19 N. J. Misc. 7, 18 A. 2d 257 (Sup. Ct. 1940).

[11] Maryland Casualty Co. v. Tighe, 29 F. Supp. 69 (N. D. Cal. 1939), *aff'd*, 115 F. 2d 297 (C. C. A. 9th 1940) (condemning distinctions between unloading and delivery); Wheeler v. London Guarantee & Accident Co., 292 Pa. 156, 140 Atl. 855 (1928).

[12] State *ex rel.* Butte Brewing Co. v. District Court, 110 Mont. 250, 100 P. 2d 932 (1940); B. & D. Motor Lines v. Citizens Casualty Co., 181 Misc. 985, 43 N. Y. S. 2d 486 (N. Y. City Ct. 1943), *aff'd*, 267 App. Div. 955, 48 N. Y. S. 2d 472 (1st Dep't 1944), *motion for leave to appeal denied*, 268 App. Div. 755, 49 N. Y. S. 2d 274 (1st Dep't 1944).

to the purchaser is the main purpose for having the truck, and such delivery is but a step incident to the use of the truck and necessary to accomplish its purpose. The parties intended the insurance to cover accidents arising out of the use of the truck while accomplishing the purposes for which it is owned, and therefore to provide coverage for accidents incurred during the delivery.[13]

Whether or not this, and additional reasoning found in other cases,[14] offer a satisfactory explanation for the doctrine remains, as is evidenced by the cases, a moot question. It is believed that there are rational objections to the "complete operation" doctrine. The reasoning under it appears to permit no logical stopping place for limiting the liability of the insurer. As long as the sometime tenuous requirement of causal connection is satisfied, it would seem that delivery after "unloading" cover most any distance and be facilitated by any activities reasonably necessary to accomplish that purpose. The need for presence of or physical connection with the truck and closeness in time between the unloading and the accident bow to the policy of protecting the insured.

Recognizing the danger thus presented, most courts conclude that each case must be treated according to its peculiar facts,[15] and thus leave open an opportunity for "drawing the line" in cases obviously demanding that, where otherwise the doctrine would apply.[16]

Although there are very few cases on the problem, the same divergent views are expressed in construction of the "loading" clause.[17] One view

[13] State *ex rel.* Butte Brewing Co. v. District Court, 110 Mont. 250, 100 P. 2d 932 (1940).

[14] Some of the other reasons employed by courts adopting the doctrine are here briefly mentioned. The court said in Maryland Casualty Co. v. Cassetty, 119 F. 2d 602 (C. C. A. 6th 1941) that there appeared from the nature of the policy an attempt to secure general coverage, and because of that it was unwise to apply highly technical rules of construction. The value of this as shedding added light on the problem is dubious. In Pacific Automobile Ins. Co. v. Commercial Casualty Ins. Co., 108 Utah 500, 161 P. 2d 423 (1945) the court reasoned that the presence of "loading and unloading" in the policy clearly showed that the coverage should include some accidents when the vehicle is stationary, and that the parties would be deemed to contemplate accidents happening during the course of delivery at the time of making the policy. Therefore conformance with their intent would require that liability should be imposed for such injuries. In Bobier v. National Casaulty Co., 143 Ohio St. 215, 54 N. E. 2d 798 (1944) the court considered the phrase "loading and unloading" ambiguous, and since those were the words of the insurer, held they should be construed in favor of the insured.

[15] American Oil & Supply Co. v. U. S. Casualty Co., 19 N. J. Misc. 7, 18 A. 2d 257 (Sup. Ct. 1940). This is also the opinion of text authors. 7 APPLEMAN, INSURANCE §4322.

[16] Stating that cases must be so treated gives the court a loophole for not applying the "complete operation" doctrine in situations which fall within its logical import, yet are so singular in facts that they demand different treatment. This exception, for example, might likely be applied where the actual delivery of the goods after the removal from the truck would require unusual methods, considerable time, and cover long distances.

[17] See cases cited note 18 *infra*. Also see State *ex rel.* Butte Brewing Co. v. District Court, 110 Mont. 250, 256, 100 P. 2d 932, 934 (1940).

regards all continuous acts in moving the goods from their place of storage to the actual placing of them on the vehicle as within the policy,[18] while the alternate view regards acts other than the actual loading on the truck as merely preparatory and not within the scope of the policy.[19] Under decisions thus far reported it is difficult to determine just how much the courts will allow "loading" to cover. Again such factors as uninterrupted continuity of movement, and perhaps the time and distance involved, may well be factors of weight. It would seem, whether dealing with loading or unloading, that before the truck could properly be held as in "use" there should be a tangible relation between the truck itself and the goods.

In construing the phrase ". . . use . . ." as enlarged by "loading and unloading" it is submitted that there is merit in the contention that some courts have overlooked the fact that the latter clause is merely to extend "use" and does not, at least in the absence of other factors,[20] purport to completely divest it of its usual connotation. It is believed that the word "unloading" as generally thought of embraces only acts closely connected with the lifting of the goods off the truck, and that liability imposed for accidents lacking closeness in time and physical connection with the vehicle infringes on the intent of the parties.[21]

The upshot of those cases which contravene the intent of the parties will likely be the modification of insurance policies in order to obtain decisions more in keeping with the usual meaning of the words "loading and unloading." This could be accomplished by inserting in the insurance contract a definition of those words as the parties intend that they shall be used.

CHARLES L. FULTON.

Insurance—Loss Occasioned by False Pretenses—Coverage Under Automobile Theft Policy

Where title and possession to an automobile are obtained by a swindler using a preconceived plan of false pretense, may the insured owner

[18] Washington Assur. Corp. v. Maher, 31 Del. Co. Rep. 575 (Pa. 1942). *Contra:* Ferry v. Protective Indemnity Co., 155 Pa. Super. 266, 38 A. 2d 493 (1944) (on very similar facts).

[19] Ferry v. Protective Indemnity Co., 155 Pa. Super. 266, 38 A. 2d 493 (1944).

[20] Further explanations in the policy or a construction of the entire instrument might tend to expand the meaning of the phrase, as might an established course of dealing under the policy consistent with the enlarged interpretation.

[21] In Zurich Gen. Accident & Liab. Ins. Co. v. American Mut. Liab. Ins. Co., 118 N. J. L. 317, 192 Atl. 387 (Sup. Ct. 1937) an employee under the usual policy had taken milk off the truck and was putting it in an icebox inside a building when an ice pick in his pocket injured someone. The court, in denying liability under the policy, at page 319, 192 Atl. 388, said: "These words are plain and unambiguous, and delimit with understandable certainty the liability imposed upon the insurer. They relate to the vehicle itself, and exclude acts that are only remotely connected with its ownership, use, or operation."