JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 82/97

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE HARRISON, J.A.

BETWEEN	PETER WILLIAMS (SNR)	
AND	PETER WILLIAMS (JNR) (By his father and next friend Peter Williams, Snr.)	
AND	SHEREEN WILLIAMS	PLAINTIFFS/ APPELLANTS
AND	FLORENCE SAMUELS	
AND	UNITED GENERAL INSURANCE COMPANY LIMITED	DEFENDANT/ RESPONDENT

Dr. Lloyd Barnett and Andre Earle, instructed by Rattray, Patterson, Rattray, for the appellants

C. Dennis Morrison, Q.C. and David Johnson, instructed by Piper & Samuda, for the respondent

November 18, 1997 and June 11, 1998

FORTE, J.A.:

I have read in draft the judgments of Downer and Harrison, J.J.A. and agree with the conclusions therein. Consequently, I have nothing to add.

DOWNER, J.A.:

To appreciate the importance as to why the legal issue has to be determined in this case, it is necessary to refer to previous proceedings between the parties which were decided by this court in favour of the insurance company. The previous decision was embodied in unreported Supreme Court Civil Appeal No. 82/96 (Downer, Bingham, Walker (Ag.) JJA) delivered on 28th April, 1997. The essence of that decision was that the appellants, the Williams family, had no authority to institute proceedings to wind up the insurance company on the basis that the insured Michael Davis was not able to meet the claim in damages for personal injuries suffered by the Williams family, as a result of a motor vehicle accident. This court decided that the Williams family, armed with the judgments obtained against Michael Davis, should then have instituted proceedings for recovery against the insurance company pursuant to section 18 of the Motor Vehicles Insurance (Third-Party Risks) Act (the Act). The Williams family was aggrieved by that decision and have obtained special leave to appeal to Her Majesty in Privy Council. The order granting special leave was made on 18th March, 1998.

The previous proceedings in the Supreme Court

Before Karl Harrison, J., the insurer had set aside the default judgment obtained by the Williams family against Michael Davis. The learned judge, relying on ***Macfoy v. United Africa Co. Ltd.*** [1961] 3 All E.R. 1169, set aside the judgment as being irregularly obtained and therefore a nullity.

There are certain features in this judgment which ought to be mentioned. The appearances read:

> "Messrs. Charles Piper and Christopher Samuda instructed by Piper and Samuda for the Applicant, United General Insurance Company Limited
>
> Messrs. Clark Cousins and Benito Palomino instructed by Rattray, Patterson, Rattray for the plaintiffs."

The other feature is the following passage from the judgment of Karl Harrison, J:

> "Unchallenged evidence in the Affidavit of Andrea Evering Gordon-Martin, Claims Manager of United General Insurance Company revealed:
>
> (a) That the defendant Michael Davis, effected a policy of Insurance with the said Company for the period 11th March 1988 to the 10th March 1989 inclusive.
>
> (b) That at the time of the accident the company had insured the defendant.
>
> (c) That the company had a contingent pecuniary interest and was materially concerned with the result of the action as the same would affect its legal rights."

The judgment continued thus:

> "In light of the above evidence it was my considered view that there was a possibility that United General Insurance Company could be liable on the judgment by virtue of section 18 (1) of the Motor Vehicle Insurance (Third Party Risks) Act. Consequently I ruled that the applicant could on its own Motion and in its own name intervene without leave and apply to set aside the default judgments. I considered it also unnecessary for the applicant to have entered an appearance. (See ***Linton Williams v. Jean Wilson and Ors.*** SCCA 73/87 delivered 29th May 1989; ***Jacques v. Harrison*** (1883) 12 QBD 136 and ***Windsor v. Chalcraft*** (1938) 2 All E.R. 751)."

This passage will be of importance when the issue of estoppel is advanced by the Williams family on the issue of notice to the insurer. This issue could have been raised before Courteney Orr, J. who subsequently assessed the damages.

Before Courteney Orr, J., the Williams family obtained in excess of $1m in damages. It was these judgments which the Williams family relied on to wind up the insurance company as was mentioned earlier. To reiterate, this court ruled against them, and that ruling is now on appeal to the Privy Council.

It is against this background that the Williams family instituted proceedings against the insurance company by way of a summons for judgment. Here is the relevant part of the summons:

> "1. a. It discloses no defence to the action.
>
> b. The Defendant is estopped from raising any issue as to whether it had notice of the bringing of the proceedings and/or is barred by the principle of res judicata
>
> c. It is an abuse of the process of the Court
>
> 2. Costs to the Plaintiffs to be agreed or taxed
>
> 3. Further or other relief as may be just."

The basis of the claim by the Williams family can be gathered from the affidavits. The affidavit of Mr. W. Clark Cousins on behalf of the Williams family in so far as is relevant reads:

> "2. That this action arises out of a Judgment of this Honourable Court dated the 29th March 1996 against the Defendant's insured Michael Davis awarding the Plaintiffs general and special damages totalling $1,104,911.00 plus accrued interest in respect of a motor-vehicle accident on 26th March 1988.
>
> 3. That I verily believe that there is no defence to this claim and the defence filed is an abuse of the process of the Court intended to delay payment of the Judgment aforesaid because:
>
> ...

b. Pursuant to an Order of this Honourable Court dated the 15th day of July 1991 substituted service of the Writ of Summons and all subsequent legal process was effected on the Defendant as the insurers of the said Michael Davis at every stage of the proceedings up to assessment of the Plaintiffs' damages on the 4th day of October 1991; attached hereto is a true copy of the said Order for substituted service marked 'C' for identity.

...

e. that the Defendant conducted the defence of its insured at trial and the abovenamed Judgment dated 29th March 1996 was entered by the Honourable Mr. Justice Courtnay Orr for the Plaintiffs.

f. That at no stage of the Interlocutory Proceedings or the trial was the question of notice of proceedings ever in issue between the parties and was accepted by the Court as having been given; attached hereto is a true copy of the Judgment of the Court dated the 2nd October 1992 marked 'D' for identity.

g. that the Defendant is, by its conduct, estopped from alleging it had no notice of the proceedings which conduct led the Plaintiff to believe that same was not in issue and not file proceedings afresh prior to the expiry of the limitation period in 1994."

Be it noted that 3(b) was admitted in the affidavit in response by Mr. David Johnson, one of the attorneys for the insurance company. Another significant admission runs thus:

> "14. That in relation to paragraph 3(f) of the said Affidavit I admit that the question of the Plaintiffs failure to serve the Defendant with Notice of Proceedings in the said suits was never in issue either in the Interlocutory proceedings or at the trial of the

> said suits. I deny, however, that the Court had, at any stage of the proceedings in the previous suits, accepted that Notice of Proceedings had in fact been given by the Plaintiffs to the Defendant."

In terms of the pleadings, the Williams family put its claim thus:

> "9. That the Plaintiffs' claims were heard by the Honourable Mr. Justice Courtnay Orr on the 13th and 16th June 1994, 18th, 19th and 20th October 1994, 13th February 1995 and 29th March 1996 and Judgement entered for the Plaintiffs' for a total sum of One Million Dollars ($1,000,000.00) for general damages plus special damages of One Hundred and Four Thousand Nine Hundred and Eleven Dollars ($104,911.00) and interest and costs to be agreed or taxed.
>
> 10. By virtue of the provisions of Section 18(1) of the Motor Vehicle Insurance (Third Party Risks) Act, the Defendant became and is liable to pay the Plaintiffs the amount of the said Judgment and costs together with interest thereon, but the Defendants have failed and refused to pay the Plaintiff the said sum or any part thereof."

The defence was structured thus:

> "6. The Defendant admits paragraph 9 of the Statement of Claim.
>
> 7. The Defendant denies paragraph 10 of the Statement of Claim and says that it did not have Notice of the bringing of Suit Nos. C.L. W 270, W 271, W 272 and S 268 of 1990 from which this action arises or of the intention to bring the said actions before or within ten (10) days after their commencement or at all as prescribed by section 18(2) of the Motor Vehicle Insurance (Third Party Risks) Act."

It is appropriate to refer to the notice of proceedings which the Williams family avers satisfied section 18(2)(b) of the Act. It reads:

> "10th April 1988
>
> Mr. Michael Davis
> 10 Marl Road
> Kingston 11

Dear Sir:

Re: Peter Williams & Family - Motor Accident
26/3/88 Black River/Sandy Grant Main Road
St. Elizabeth

We act for Mr. Peter Williams and family.

We are instructed that at the time and place abovementioned, your tractor-trailer licenced CC 4358 was so negligently driven by your employee from private property unto a major road as to cause a collision with our client's motor car. As a result, he and members of his family sustained injuries and his motor-car was extensively damaged.

Kindly advise whether your insurers are authorised to settle this claim. Unless we hear from you within fourteen (14) days, we shall have no alternative but to file suit against you. This letter serves as Notice of Proceedings pursuant to the provisions of the Motor Vehicles (Third Party Risks) Act.

Yours faithfully
RATTRAY, PATTERSON, RATTRAY

Per: W. CLARK COUSINS

WCC:rs

CC. United General Ins. Co. Ltd.
CC Peter Williams."

Here was the response of the insurance company:

"WITHOUT PREJUDICE

11th January, 1989

Messrs. Rattray, Patterson, Rattray,
Attorneys-at--Law,
15 Caledonia Avenue,
Kingston 5.

Attention: Mr. W. Clark Cousins

Dear Sirs,

Re:	Accident	-	26/3/88
	Our Insured	-	Michael Davis
	Our Ref.	-	ME-0716/3/88
	Your Client	-	Peter Williams
	Your Ref.	-	W-294

We refer to your letter of 11th April, 1988. Our apologies for the delay in responding.

Entirely without prejudice, please let us have details of your client's claim with supporting documents with a view to a settlement.

Yours faithfully,
United General Insurance Company Limited

Monica G. Earle-Brown (Mrs.)
Claims Manager/Legal Officer."

The summons for judgment was heard by Clarke, J., and the order awarded on 20th June, 1997, reads:

1. "The Summons for Judgement dated 2nd May, 1997 stands dismissed.

2. The costs of the Summons for Judgement are awarded to the Defendant to be taxed if not agreed.

3. Leave to appeal granted."

This is the order now on appeal to this court. Additionally, it is useful to refer to the agreed note of the learned judge's reasons:

"JUDGEMENT

IN THE SUPREME COURT

CIVIL APPEAL NO. 82 OF 1997

SUIT NO. C.L. W-180 OF 1996

BETWEEN PETER WILLIAMS (SNR)
PLAINTIFF/APPELLANT

A N D PETER WILLIAMS (JNR)
PLAINTIFF/APPELLANT

A N D SHEREEN WILLIAMS
PLAINTIFF/APPELLANT

A N D FLORENCE SAMUELS
PLAINTIFF/APPELLANT

A N D UNITED GENERAL INSURANCE COMPANY LIMITED
DEFENDANT/RESPONDENT

Facts not in dispute. Chronology of steps taken not in dispute.

I hold that the defence as disclosed in statement of defence is arguable and that the statement of defence discloses a reasonable defence.

Great question to be determined at trial is whether 1988 notice satisfied requirements of section 18 (2) (b) in context of this case where there has been two sets of actions in respect of which one notice was given the notice being given prior to commencement of first set of actions/proceedings.

I therefore dismiss Summons with costs to Defendant to be taxed if not agreed. Leave to appeal granted."

Proceedings in This Court

The grounds of appeal read:

1. "The learned trial Judge erred in law in ruling that there was a live issue requiring a trial, to wit, whether the Notice of bringing of proceedings dated the 11th day of April 1988 issued prior to any proceedings in respect of a motor vehicle accident on the 26th day of March 1988 related to proceedings commenced by the Plaintiffs/ Appellants in 1988 or proceedings commenced by the Plaintiffs/Appellants in 1990.

2. The learned trial Judge erred in law in:

a. not holding that the Plaintiffs/Appellants had complied with Section 18(2) of the Motor Vehicles Insurance (Third Party Risks) Act

b. failing to enter Judgement for the Plaintiffs/Appellants accordingly."

I would find initially against the insurer on the basis of estoppel and/or abuse of process. The insurance company could have taken the point about notice before Courteney Orr, J. as they were the effective defendants as an intervenor.

The insurance policy was regrettably not exhibited but it is a reasonable inference that the insurer intervened before Karl Harrison, J., to set aside the default judgment and subsequently before Courteney Orr, J., on the assessment of damages because the terms of the policy empowered them to take over proceedings brought against the insured. It is estoppel by conduct and ***Odgers on Pleading and Practice*** 19th Edition at page 199 has a useful note. In so far as is relevant it runs thus:

> "...but that an estoppel by conduct might in some cases be given in evidence without being specially pleaded (***Freeman v. Clarke*** [1948] 2 Ex. 654; ***Phillips v. Im Thurun*** 18 C.B. (res) 400)"

Baker v. Provident Accident [1939] 2 All E.R. 690 supports the principle that if absence of notice was relied on it should be pleaded by the insurer. The defence by the insurer could also be viewed as an abuse of process.

On the construction of section 18 of The Act

Alternatively, when section 18(2)(b) of the Act is considered, the Williams family also has a compelling claim. The plain reading indicates that the notice referred to earlier, satisfies this section. It was however contended by Mr. Morrison, Q.C., for the insurer, that the original writ filed 8th March, 1989, expired

and that a new writ was filed on 6th December, 1990, and there was no notice to the insurers of this. To my mind, Dr. Barnett's citation from ***Bingham's Motor Claims Cases*** Sixth Edition was an effective answer to the insurer's submission. The passage at page 643 runs thus:

> "Pursuant to sub-s. (2) (a) of s. 207 it is the prudent course for a plaintiff's solicitor to give formal notice to the insurer of the commencement of proceedings. The subsection speaks of commencement of proceedings, not the service of the writ, and possibly it is intended to try to minimise the injustice where an insured fails to send on the writ to insurers and judgment was signed in default, and the insurer rendered liable without having had the opportunity to appear or defend. Primarily, however, it seems intended to bring sub-s. (3) into operation.
>
> With regard to (2) (c) (iii) it is important to observe that if a summons is necessary, it must be issued within fourteen days. If this time expires then apparently the only course is to serve a fresh notice of cancellation, and meanwhile the insurer remains on risk.
>
> It is submitted that the only notice an insurer can have before the commencement of proceedings is notice of an intention to bring the proceedings."

Section 207(2)(a) above corresponds to section 18(2)(b) of The Act. ***Ceylon Motor Insurance Association v. Thambugala*** [1953] A.C. 584; {1953] 2 All E.R. 870 supports the passage in ***Bingham's*** (supra).

<u>What is to be done?</u>

Once the issue of law is decided in favour of the Williams family, the court ought to enter judgment for them. It would be a waste of time to refer this matter to be decided by the Supreme Court. Such a decision would only increase costs. Clarke, J., should have decided the issue of law, as he admitted the facts were not in

dispute. Three authorities cited support this stance. Firstly, ***European Asian Bank A.G. v. Punjab and Sind Bank*** [1983] 2 All E.R. 508. The headnote at page 509 contains the following relevant statement:

> "Furthermore, if the appeal raised a point of law the court would hear full argument and decide it even though by doing so it would determine the outcome of the substantive proceedings."

This decision was followed in ***R. G. Carter Ltd. v. Clarke*** [1990] 2 All E.R. 209 where the headnote in part reads:

> "Although there is no right of appeal against an order giving unconditional leave to defend on a summons for summary judgment under RSC Ord 14 when the judge giving leave considers there to be a triable issue of evidence, if the judge considers there to be a triable issue of law he ought then and there to decide that issue himself, rather than give leave to defend, so that the costs of another hearing are saved and the parties can appeal straight to the Court of Appeal if they wish."

A case which reviews all the relevant authorities is ***Trinidad Home Developers Ltd. v. I. M. H. Investment Ltd.*** [1989] 39 W.I.R. 355. Although these cases pertain to Order 14 procedure, the principle that the issue of law should be decided by the judge hearing the summons if there is no dispute as to the facts is also applicable to applications pursuant to sections 79 and 233 of the Civil Procedure Code. Since there were no issues of fact in dispute and an issue of law to decide, then Clarke, J. should have decided the point of law. Since he did not, this court will do it.

The endorsement on the writ reads as follows:

> **"ENDORSEMENT**
>
> The Plaintiffs claim from the Defendant the sum of **One Million Dollars ($1M)** being the sum due and

> owing by the Defendant to the Plaintiffs by virtue of its statutory obligation pursuant to the provisions of the Insurance Act and the Motor Vehicles (Third Party Risks) Act to pay a Judgement of the Supreme Court against its insured, interest costs and other relief as may be just."

In these circumstances, section 79 of the Civil Procedure Code comes into play. It reads:

> "79(1) Where the defendant appears to a writ of summons specially indorsed with or accompanied by a statement of claim under section 14 of this Law, the plaintiff may on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any liquidated sum is claimed), and stating that in his belief there is no defence to the action except as to the amount of damages claimed if any, apply to a Judge for liberty to enter judgment for such remedy or relief as upon the statement of claim the plaintiff may be entitled to. The Judge thereupon, unless the defendant satisfies him that he has a good defence to the action on the merits or discloses such facts as may be deemed sufficient to entitle him to defend the action generally, may make an order empowering the plaintiff to enter such judgment as may be just, having regard to the nature of the remedy or relief claimed."

Alternatively, section 238 would also be appropriate. It reads:

> "238. The Court or a Judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer; and in any such case, or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."

Since the Supreme Court is thus empowered, this court has similar powers. See paragraphs 18(1) and (3) of the Court of Appeal Rules, 1962. The important principle to grasp is that both these provisions oblige the judge to decide the point

of law and enter judgment for the plaintiff if the circumstances so warrant. So I would set aside the order of the court below and enter judgment for the Williams family for $1,000,000 together with interest and taxed or agreed costs both here and below.

HARRISON, J.A.

This is an appeal from an order of Clarke, J. dated the 20th day of June, 1997, dismissing a summons in which the appellants sought an order that the defence filed be struck out and judgment entered for the appellants.

The facts are not in dispute. A history of the events is important. On the 26th day of March, 1988, the appellants received injuries in a motor vehicle accident, caused by the negligent driving of one Michael Davis, who was an insured of the respondent under a policy of insurance issued in accordance with The Motor Vehicles Insurance (Third Party Risks) Act- ("The Act").

By letter dated the 11th day of April, 1988, the appellants' attorneys-at-law notified the insured and the respondent of the intention to bring proceedings pursuant to section 18(2)(b) of the said Act. By letter dated the 11th day of January, 1989, the respondent acknowledged receipt of the said notice.

On the 8th day of March 1989, a writ of summons in respect of the claim of each appellant was filed. The writs were not served, nor were they renewed; they expired on 8th March, 1990.

On the 6th day of December, 1990, writs of summons were again issued in respect of the said matter.

On the 15th day of July, 1991, an order for substituted service was made to effect service on the insurer, the respondent, by registered post. On 6th August, 1991, interlocutory judgment in default of appearance was entered. Subsequently damages were assessed and final judgment was entered. This judgment was set aside on 2nd October, 1992, leave was granted to defend and a defence was filed.

The matter was subsequently tried and judgment was entered against the insured Michael Davis on 23rd March, 1996.

The latter judgment was unsatisfied and consequently a writ of summons was issued and served on the respondent, as insurer, pursuant to the provisions of The Motor Vehicles (Third Party Risks) Act. A summons for judgment against the respondent heard on the 20th June, 1997, was dismissed by Clarke, J. on the basis that the defence filed was an arguable one and the question of the notice pursuant to section 18(2)(b) of the Act was a "great question" to be determined at the trial; leave to appeal was granted. Consequently, this appeal was filed.

Dr. Barnett for the appellants argued that the respondent as insurer is liable to satisfy the judgment, and can only escape liability if it serves notice in accordance with section 18(3) of the Act that no notice was given by the said insurers; that the statutory notice given to the insurer on 11th April, 1988, prior to the filing of the writs on 8th March, 1989 sufficed as notice in subsequent proceedings; that each notice given before suit is filed does not relate to any specific writ but is notice of intention to bring proceedings in respect of the risk covered. The learned trial judge could therefore have determined the issue of law as to the effect of the notice, as in summary proceedings; to save judicial time and costs. He relied on **Bingham's Motor Claims Cases** 4th Edition, at page 643; **Lloyd v The Jamaica Defence Board** (1981) 18 J.L.R. 223; **European Asian Bank v Punjab and Sind Bank** [1983] 2 All E.R. 508; **Carter Ltd. v Clarke** [1990] 2 All E.R. 209; and **Trinidad Home Developers Ltd. v I.M.H. Investment Ltd.** (1980) 39 W.I.R. 355.

Mr. Morrison, Q.C., for the respondent submitted that on a proper interpretation of section 18(2)(b), no notice was given in respect of the writs filed in

1990, in that the notice given in respect of the writs filed in 1989 is inadequate to satisfy the statutory requirements that the insurer is to be given notice of the proceedings in which judgment is given; that the learned trial judge applied the correct test of whether the defence filed was an arguable one. He relied on **Cross v. British Oak Insurance Co., Ltd.** [1938] 1 All E.R. 383 and **Bingham's** supra.

The main issue that arises in this appeal is the correct interpretation of section 18 of the Motor Vehicles Insurance (Third Party Risks) (Act). The relevant portion reads:

> "18.- (2) No sum shall be payable by an insurer under the foregoing provisions of this section ;
>
> (a)...
>
> (b) in respect of any judgment, unless before or within ten days after the commncement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or
>
> ...
>
> (3) No sum shall be payable by an insurer under the foregoing provisions of this section, if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given he has obtained a declaration that, apart from any provision contained in the policy, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular,... :
>
> Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefits of this subsection as respects any judgment obtained in proceedings commenced before the

> commencement of that action, unless before or within ten days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation ....." (Emphasis added)

Under the provisions of the Act an insurer has a duty to satisfy any judgment obtained against its insured in respect of liability covered by the terms of the relevant insurance policy (section 18 (1)).

The notice to the insurer under section 18(2)(b)

> "... before... the commencement of the proceedings in which judgment was given...,"

is issued for the purpose of affording the insurer the opportunity to:

a) defend the proceedings at trial, or

b) settle any claim before trial, or

c) bring an action for a declaration to avoid the obligation to pay, because of the insured's,

(i) non-disclosure, or

(ii) false representation, of material facts.

Such a notice "... before ... the commencement of the proceedings...", cannot therefore specify nor relate to any specific writ of summons, the latter not having yet been filed. The insurer is therefore required thereafter itself to ascertain when the writ is filed and, more importantly, when it is served, in order to defend, if it wishes to do so.

There is no statutory requirement, besides the said notice, that the insured be further progressively advised by the claimant.

Furthermore, the action that the insurer may bring, in order to avoid payment due to non-disclosure or false representation (section 18(3)) is a separate action for a

declaration, independent of whether or not a writ is filed in relation to the proceedings specified in the notice.

The importance and effect of the notice to the insurer was described by the author in **Bingham's Motor Claim Cases, 6th edition** at page 643:

> " Paramount to sub-s.(2)(a) of S. 207" (alike our Section 18 (2)(b)) "it is the prudent course for a plaintiff's solicitor to give formal notice to the insurer of the commencement of proceedings. The subsection speaks of commencement of proceedings, not the service of the writ, and possibly it is intended to try to minimise the importance where an insured fails to send in the writ to insurers and judgment was signed in default, and the insurer rendered liable without having had the opportunity to offer or defend. Primarily, however, it seems intended to bring sub-s (3) (our Section 18(3)) into operation.....
>
> It is submitted that the only notice an insurer can have before the commencement of proceedings is notice of an intention to bring the proceedings."

In the instant case, although the notice to the insurer as required by section 18(2)(b) of the Act was given by letter dated 11th April, 1988, no acknowledgment was given by the respondent until approximately nine (9) months after, namely by letter dated the 11th January, 1989. The respondent brought no action for a declaration, and has not done so to date. The respondent was not therefore relying on any non-disclosure nor false representation, as it could have (section 18(3)).

From the time the writs were filed on 8th March, 1989, until their expiry without renewal on the 8th day of March, 1990, no opportunity arose for the respondent to defend, no service having been effected on the insured.

The "new" writs filed on the 6th December, 1990, presented the first opportunity for the respondent to defend when service was deemed to have been effected pursuant to the order for substituted service on 15th July, 1991.

Having received the initial notice on the 11th day of April, 1988, it remained the obligation of the insurer to ascertain by its own initiative or through its insured, when the writs were filed and served, for the purpose of a probable defence,

The intervening circumstances of expiry of the writs without renewal and their subsequent re-filing do not contemplate any act of involvement of the insurer in either process; the insurer is affected by neither.

The rationale of the life of the writ existing for twelve months and the permitted renewals (Section 30 of the Judicature (Civil Procedure Code) Law, is that the Court shall maintain control over the filing of actions to ensure their expeditious despatch and prompt disposal. However, extension of the validity of a writ may be granted even in cases where both the writ and the limitation period have expired, but the applicant is required to give a satisfactory explanation why he failed to apply before expiry - **Kleinworth Benson Ltd. vs. Barbrak Ltd.** [1987] 2 W.L.R. 1053; see also Section 676 of the said Code. The appellant had the option of renewal.

Instead of applying for renewal of the writs, invoking the discretion of the Court, the appellants chose the more direct procedure of filing new writs; in either case the subject matter remained the same.

Because of its intent and purpose, section 18(2)(b) of the Act must be widely construed. The phrase:

> "... before... the commencement of **the proceedings** in which judgment was given..."

should not be given a restricted meaning. It should not be understood to mean:

> "... before ... the commencement of **the writ** in which judgment was given..." (Emphasis added).

Seeing that "commencement of proceedings" is not synonymous with "filing of writ", the presumed hiatus created by the said expiry of the writs and the filing of new writs, is not a break in the "commencement of the proceedings."

We agree with Dr. Barnett that the notice dated 11th April, 1988, given to the respondent satisfied the statutory requirements of section 18(2)(b) and governed the judgment given in respect of the writs filed on 6th December, 1990.

Dr. Barnett submitted that this Court having decided the point of law and set aside the order of Clarke, J. should, by analogy, considering the summary judgment procedure contained in section 79 of the Code, enter judgment in the appellants' favour, as Clarke, J. should have done, in the exercise of the inherent jurisdiction of the Court. Mr. Morrison disagreed with this approach, correctly pointing out that judgment was not sought under section 79, but was governed by section 238 of the Code.

Section 238 in part provides:

> " The Court or a Judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer; and in any such case ..... the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."

This appeal concerns a single point of law. There are no facts in dispute. This point of law has been fully argued before us and determined by us. We can see no purpose to be served to return this matter for the entry of judgment which latter act we have the power to do. This will both save judicial time and determine the real question between the parties; see rule 18 (3) Court of Appeal Rules, 1962.

Accordingly, the appeal is allowed, the order is set aside and judgment is entered for the plaintiffs for the sum of $1,000,000 plus interest and costs of this appeal and in the Court below to be taxed if not agreed.

FORTE, J.A.

Appeal Allowed. Order of the Court below set aside. Judgment entered for the appellants in the sum of $1,000,000.00 plus interest. Liberty to apply in respect to the interest.

Costs both here and below to the appellants to be agreed or taxed.