THE COURT OF APPEAL

Birmingham J.
Edwards J.
Hedigan J.

Neutral Citation Number: [2017] IECA 305

Record No: 2016/565

THE PEOPLE AT THE SUIT OF

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

V

BRONISAW OPACH

Appellant

JUDGMENT of Mr Justice Edwards delivered 27th of November 2017.

Introduction
1. This is an appeal against the judgment and order of the High Court (Twomey J), dated the 25th of October 2016, answering in the affirmative a question of law on which the opinion of the High Court had been sought by way of case stated by Judge Geoffrey Browne, a Judge of the District Court, pursuant to Section 2 of the Summary Jurisdiction Act, 1857, as extended by the Courts (Supplemental Provisions) Act, 1961.

The Facts
2. Section 56(1) of the Road Traffic Act 1961 as amended (the Act of 1961) provides (in substance) that a person shall not use in a public place a mechanically propelled vehicle unless either a vehicle insurer, a vehicle guarantor or an exempted person would be liable for injury caused by the negligent use of the vehicle by him at that time or there is in force at that time either an approved policy of insurance (as defined in the legislation), alternatively an approved guarantee (as defined in the legislation).

3. Section 62(1) of the Act of 1961 defines an "approved policy of insurance" in the following terms:

> "62.—(1) A policy of insurance shall be an approved policy of insurance for the purposes of this Act if, but only if, it complies with the following conditions:
>
> (a) it is issued by a vehicle insurer to a person (in this Act referred to as the insured) named therein;
>
> (b) the insurer by whom it is issued binds himself by it to insure the insured against all sums without limit which the insured or his personal representative shall become liable to pay to any person (exclusive of the excepted persons) whether by way of damages or costs on account of injury to person or property caused by the negligent use, during the period (in this Act referred to as the period of cover) specified in that behalf in the policy, of a mechanically propelled vehicle to which the policy relates, by the insured or by any of such other persons (if any) as are mentioned or otherwise indicated in that behalf in the policy;
>
> (c) the liability of the insurer under the policy is not subject to any condition, restriction, or limitation prescribed as not to be inserted in an approved policy of insurance;
>
> (cc) … (not relevant);
>
> (d) the period of cover is not capable of being terminated before its expiration by effluxion of time by the insurer save either with the consent of the insured or after seven days' notice in writing to the insured; and
>
> (e) … (not relevant)."

4. Section 56(3) of the Act of 1961 provides (*inter alia*) that:

> "Where a person contravenes subsection (1) of this section, he and, if he is not the owner of the vehicle, such owner shall each be guilty of an offence…"

5. Section 56(4) of the Act of 1961 provides for a statutory presumption in favour of the prosecution that a vehicle was being used in contravention of the section where a demand under s.69 of the Road Traffic Act 1961 has been made.

6. The statutory presumption operates **only** in the circumstances described in s.56(4). Otherwise, the prosecution bears the burden of proving that no insurance was in place at the material time. In *Stokes v O'Donnell*, [1999] 3 I.R. 218 the High Court (Laffoy J.) held, at p.225, that in order to rely on the presumption under s.56(4) so that the evidential burden passed to the accused, there must be evidence before the court that:

> a) A demand was made under s.69 of the Act of 1961; and
>
> b) The person on whom the demand was made, failed to produce a certificate of insurance as defined in s.66 of the Act of 1961 (alternatively of guarantee or evidence of exemption – this Court's addition).

7. On the 30th of May 2014 the appellant was the owner of a motorcycle, registration no 99 WH 4865, which was being driven by his

son, Pawel, when Pawel was stopped by Garda Colum Barron and required under s.69 of the Act of 1961 to produce a certificate of insurance (alternatively a certificate of guarantee or a certificate of exemption). Pawel was a named driver on a valid policy taken out by his father, and he duly produced evidence of that insurance in the form of a valid certificate of insurance showing him to be a named driver.

8. However, one of the conditions of the appellant's policy as endorsed on the policy schedule (and which was reproduced in the certificate of insurance) was that the appellant *"must ensure that all riders have a valid license to ride the motorcycle. Failure to hold a valid licence could result in a claim being declined and your policy cancelled"*. At the time that he was stopped Pawel did not have a valid driving licence and was, in fact, using a forged driving licence. Pawel was prosecuted in the District Court in relation to the use of a forged driving licence and also for driving without insurance and was convicted of both offences.

9. The appellant was then also prosecuted for having been the owner of a vehicle which had been used by his son at a time when there was not in place an approved policy of insurance covering such driving.

10. At the trial before the District Court judge the solicitor for the appellant submitted there was a valid policy of insurance in being and the fact that the user did not have a valid driving licence did not void the policy of insurance. It was submitted by him that the validity of the policy of insurance was unaffected by the conduct of the user.

11. In response the prosecution submitted that because the user of the vehicle did not have a valid driving licence the policy of insurance was invalid in relation to him and accordingly the appellant was guilty of the offence.

12. The District Court judge was persuaded by the prosecution's argument and proceeded to convict the appellant and impose upon him a fine of €500 together with a disqualification from driving for a period of two years.

13. Subsequently, on the application of the appellant, the appellant being dissatisfied with the District Court judge's determination as being erroneous on a point of law, the District Court judge agreed to send forward this case stated.

14. The question posed by the District Court for the opinion of the High Court was in the following terms:

> *Was I correct in law to find that the certificate of insurance was invalid and that the appellant was guilty of an offence contrary to s.56(1) and (3) of the Road Traffic Act 1961 (as amended by s.18 of the Road Traffic Act 2006)?*

15. Section 18 of the Road Traffic Act 2006 merely made alterations to the prescribed penalties in the principal section and has no bearing on the issues arising for determination on this appeal.

The High Court's Judgment.
16. As indicated in the introduction to this judgment, the High Court answered the question posed in the affirmative.

17. In doing so, however, the High Court the trial judge reformulated the question with reference to "an approved policy of insurance" rather than with reference to the validity or otherwise of the certificate of insurance produced to Garda Barron, and the precise form in which the reformulated question was answered was:

> *"The District Court was correct to find that the appellant was guilty of an offence contrary to s.56(1) and (3) of the 1961 Act, because the appellant did not have an approved policy of insurance as required by s. 56(1)."*

18. The High Court judge's reasoning is to be found in paragraphs 6 – 9 of his judgment in which he states:

> "**'approved policy of insurance'**
>
> 7. This expression is defined in s 62(1) of the 1961 Act. as amended, which, insofar as relevant, states;-
>
> "62.—(I) A policy of insurance shall be an approved policy of insurance for the purposes of this Act if. but only if. it complies with the following conditions
>
> (à) it is issued by a vehicle insurer to a person (in this Act referred to as the insured) named therein,
>
> (b) the insurer by whom it is issued binds himself by it to insure the insured against all sums without limit which the insured or his personal representative shall become liable to pay to any person (exclusive of the excepted persons) whether by way of damages or costs on account of injury to person or property caused by the negligent use. during the period (in this Act referred to as the period of cover) specified in that behalf in the policy, of a mechanically propelled vehicle to which the policy relates, by the insured or by an of such other persons (if any) as arc mentioned or otherwise indicated in that behalf in the policy, [..]"

The Insurance Policy Schedule
8. It is next relevant to consider the Motorcycle Insurance Policy Schedule which was attached to the Case Stated by Judge Browne and which was referred to in evidence in the District Court case before Judge Browne This Insurance Policy Schedule stales, insofar as relevant, that Bronisaw Opach, is the insured (although his first name appears to be misspelt as "Bronislaw") and it provides as follows:

> 'Drivers or classes of drivers whose driving is covered:
>
> Named Drivers: Bronislaw Opach Pawel Opach
>
> You must ensure that all riders have a valid licence to ride the motorcycle Failure to hold a valid licence could result in a claim being declined and your policy cancelled.'

9. It is this Court's view that under the express terms of this Insurance Policy Schedule, that the insurer of Mr Bronisaw Opach. Liberty Insurance, »as not bound to insure the insured as required by s 62(1X«) of the 1961 Act, since the plain and literal meaning of the term *binds himself* is that the insurer is legally obliged to do something However, in this instance, it seems clear to this Court that, by virtue of the express wording of the Insurance Policy Schedule, the insurer was not, in fact legally bound to indemnify the

insured, as required by s 62(1)(a) of the 1961 Act On the plain meaning of the foregoing extract from the Insurance Policy Schedule, it was open to the insurer to decline to indemnify the insured where a rider did not have a valid licence"

The Grounds of Appeal
19. The appellant appeals on the following 10 grounds:

a) The learned trial Judge erred in law holding that the appellant did not have an approved policy of insurance within the meaning of ss.56, 62 and 66 of the Road Traffic Act 1961;

b) The learned trial Judge erred in law by holding that the appellant did not have an approved policy of insurance within the meaning of ss.56, 62 and 66 of the Road Traffic Act 1961 by virtue of the failure of the user of the mechanically propelled vehicle to hold a valid driving licence;

c) The learned trial Judge erred in law by not holding that the prosecution were obliged to prove that the appellant was not insured or that no indemnity was in place at the material time;

d) The learned trial Judge erred in law by not holding that the statutory presumption in favour of the prosecution did not arise on the facts of this case and that the prosecution were under a duty to prove that no valid policy of insurance was in place at the material time;

e) The learned trial Judge erred in law by failing to hold that the prosecution had failed to prove the allegation contrary to s.56 of the Road Traffic Act 1961;

f) The learned trial Judge erred in law by failing to hold that the prosecution had failed to discharge the burden of proof which rests with it, in that there was no evidence to the required criminal standard that indemnity was not in place;

g) The learned trial Judge erred in fact and in law by failing to properly or at all interpret the precise terms of the policy of insurance which clearly stated on its face that in the event of the driving licence condition not being adhered to, it *"could result in a claim being declined and your policy cancelled"* as opposed to *"will result in a claim being declined and your policy cancelled"*;

h) The learned trial Judge further erred in law by failing to hold that there was a duty on the prosecution to prove a state of knowledge on the part of the appellant, namely; that he knew or ought to have known the user was using the vehicle while holding a forged driving licence;

i) The written judgment by the learned trial Judge fails to address and/or consider all of the legal arguments advanced by the appellant adequately or at all;

j) The learned trial Judge, despite having received detailed written submissions on behalf of the appellant, indicated that he did not intend to consider the said written submissions and required oral submissions in lieu. As a result, the learned trial Judge failed to properly consider, or at all, the legal issues raised by the appellant in this appeal.

Submissions on behalf of the Appellant
20. In summary, the appellant's position in this case is as follows:

a) The appellant holds an approved policy of insurance within the meaning of ss.56, 62 and 66 of the Road Traffic Act 1961;

b) The statutory presumption found in s.56(4) in favour of the prosecution does not arise on the facts of this case;

c) It is for the prosecution to prove that the appellant was not insured or that the policy did not bind the insurer to insure the insured against all sums;

d) Following the production of a valid policy of insurance by the owner (the appellant herein), the appellant invited the prosecution to call a witness from the insurance company about the policy, but no such evidence was placed before the District Court judge by the prosecution;

e) The prosecution has failed to discharge the burden of proof which rests with it, in that there is no evidence to the required criminal standard that indemnity was not in place;

f) The certificate of insurance clearly states on its face that in the event of the driving licence condition not being adhered to, it *"***could** *result in a claim being declined and your policy cancelled"* as opposed *to "***will** *result in a claim being declined and your policy cancelled"*;

g) In the alternative, even if no indemnity was provided by virtue of failure to satisfy a condition (which is denied), the prosecution have failed to prove a state of knowledge on the part of the appellant, namely; that he knew or ought to have known the user was using the vehicle while holding a forged driving licence.

21. The appellant approaches the issue by asking "how is a charge of no insurance proven". He submits that the prosecution, as with any criminal charge, bears the burden in proving to the criminal standard that an offence has been committed. In that regard there are a number of ways in which the prosecution may prove that there was no valid insurance cover or indemnity in place. For example:

a) The prosecution may rely on the statutory presumption in s.56(4) that there was no insurance in place at the material time where either of the following occurs:

i. Following a demand made of the user of a vehicle under s.69, the user fails to produce a certificate of insurance, certificate of guarantee or certificate of exemption; or

ii. There was a failure of the holder of a certificate to allow it be inspected by the Garda Síochána.

b) The prosecution may rely on other admissible evidence such as an admission by an accused that no insurance cover exists;

c) The prosecution may rely upon a patent or obvious breach of a condition or stipulation in the policy which would definitively result in no indemnity or cover;

d) Where a valid policy of insurance is produced by an accused, the prosecution may seek to call evidence that there was no indemnity in place – *i.e.* calling evidence from the insurance company who issued the policy.

22. In *Lyons v Cooney* [1978] I.R. 41 Henchy J., delivering one of the judgments of the Supreme Court, spoke (at p.48) about the manner in which the prosecution can prove a no insurance charge:

> *"The provisions of s.56 of the Act of 1961 make it an offence when a mechanically propelled vehicle is used in a public place without an approved policy of insurance or its alternative. The fact that a vehicle was uninsured can be proved by the prosecution in either of two ways. They could adduce evidence of a positive nature probative of the fact that the vehicle was uninsured. For example, they could put in evidence a statement by the defendant admitting that the vehicle was uninsured. Alternatively they could rely on the provisions of s.56, sub-s. 4, which cast on the defendant the onus of showing that the vehicle was not used in contravention of the section when 'the person on whom the demand was made' (not, be it noted, 'the defendant') refused or failed to produce the necessary certificate."*

The appellant submits that it is clear from this passage that in the absence of the statutory presumption, the prosecution must prove the offence. This was described by Henchy J. as being *"evidence of a positive nature probative of the fact that the vehicle was uninsured".*

23. It was submitted that in the present case, the presumption does not arise as a valid certificate of insurance has been produced. Therefore, where that occurs, the prosecution must prove that indemnity was not in place at the material time. The appellant sensibly concedes that if there is some obvious or patent breach of a stipulation then the offence may be made out on the basis of the certificate alone. However, he maintains that the fact that his son had no licence merely rendered the policy voidable at the option of the insurer, not void.

24. In fact, we have been told, what occurred in this case was that the appellant provided what was described by Garda Barron in his evidence as a *"valid certificate of insurance"*, the validity of which had been verified with Liberty Insurance by the garda.

25. Counsel for the appellant points out that notwithstanding an invitation by the solicitor for the appellant to the prosecution to call a witness from the insurance company who issued the certificate, no such evidence was called at the hearing of the case. What occurred instead was an assertion that no indemnity was present because of the breach of a condition or stipulation of the policy — a condition or stipulation which merely stated failure by a driver to have a licence *"***could** *result in a claim being declined and your policy cancelled".*

26. The appellant submits that even if an evidential burden had rested on the appellant in this case by virtue of the presumption being operative, like any evidential presumption reversed on to an accused it can be discharged on the lowest standard of proof namely that of raising a reasonable doubt.

27. The appellant maintains that the terms of the policy when literally construed do not state that the failure to comply with the driving licence condition **will** result in no indemnity or that the insurer was not bound *"to insure the insured against all sums".* Therefore, there was no evidence beyond a reasonable doubt that indemnity would not have been provided in the event of a claim on the policy. The policy expressly states that the failure to comply with the driving licence condition **could** affect a claim or result in a policy cancellation. The legal effect of this is that the policy may be voidable for breach of the specified condition should the insurer elect to avoid it but that it is not rendered void *ab initio.*

28. This case is said to be distinguishable from *Ighovojah v Smyth*, [2016] IEHC 505, [2016] 4 JIC 0703, in that the neither the policy nor the certificate states that insurance cover **will not be provided** in the event of the stipulated condition not being adhered to. In the *Ighovojah* case, the accused took out a policy of insurance when he was disqualified from driving. The certificate itself expressly excluded cover in circumstances where it stipulated that indemnity would not be in place where the user of the vehicle was so disqualified.

29. In further support of his position that the policy was merely voidable the appellant refers us to *Hannigan v Wright* (1986) 4 I.L.T. 175, a decision of His Honour Judge Peter O'Malley in the Circuit Court. He does not of course put this forward as a binding precedent, but rather for its persuasive influence. In *Hannigan* the appellant appealed a conviction under s.56 of the 1961 Act imposed in the District Court. Although the appellant had an insurance certificate which on its face covered him on the date in question, the prosecution evidence showed that he had made a false statement in obtaining the policy and that the insurance company could have avoided indemnity. The appellant in taking out the policy denied any conviction under the Road Traffic Acts within the previous ten years — which was in fact a false statement.

30. At the hearing of the appeal, counsel for the appellant submitted that any disputes about the policy were to be settled by arbitration, that the insurance company had not refunded the appellant his premium, and that the prosecution was not entitled to go behind an insurance certificate which was good on its face.

31. The written submissions of the appellant attempt to advance a further argument, namely that the offence is not one of strict liability and that the prosecution was obliged to prove that the appellant knew or ought to have known that his son's driving licence was forged. In that regard s.56(5) provides that it shall be a good defence to the charge for the person to show that the vehicle was being used without his consent and either that he had taken all reasonable precautions to prevent its being used or that it was being used by his servant acting in contravention of his orders. However, in circumstances where no such case was made in the District Court, and the case stated raises no such issue, I do no consider it necessary to engage with this submission. The appellant has at no stage sought to raise a defence alleging that he did not know that his son was using the motorcycle, or that he did not know that his son had a forged driving licence, or that he had made reasonable inquiries in the course of which he had been misled by his son. These issues simply do not arise for consideration on the facts as found by the District Judge and recited in the case stated. The issue before this court is confined to whether, on the evidence adduced before the District Court judge, it was established beyond reasonable doubt that the appellant's motor cycle was used by his son at a time when there was not in place an approved policy of insurance.

Submissions on behalf of the respondent
32. The respondent has submitted that in order to comply with s. 56 of the Act of 1961 as amended and the obligation to have insurance on any given date (in this case, May 30, 2014) , there must be in force *"an approved policy of insurance whereby the user or some other person who would be liable for the injury caused by the negligent use of the vehicle at that time, is* **insured** *against all sums without limit ..which the user ..or such other person … shall become liable to pay to any person by way of damages or costs on account of injury to person or property caused by the negligent use of the vehicle at that time.*

33. The respondent contends, in effect, that it was a condition of the policy that the insured should ensure that all riders have a valid licence to ride the motorcycle, and further that the consequences of a failure to do so were clearly spelled out in the schedule, namely that it could result in a repudiation of liability by the insurer. In those circumstances, the legal position under Irish insurance law was that were the motorcycle were to be ridden on the public highway by a person who did not at the time hold a valid licence to do so the insurer would not be bound to indemnify the insured. The insurer might still decide to provide an indemnity as a matter of discretion, but equally might in its discretion decide not to do so. It was not bound to provide an indemnity in the circumstances, and for the policy to be "an approved policy of insurance" the insurer was required to be bound to provide the necessary indemnity. It would be so bound in circumstances where there was clear compliance with the terms of the policy. Equally, it would not be so bound where there was clear non-compliance with the terms of the policy. On the contrary it could, at its option, avoid liability if it wished to do so.

34. The respondent also relies on *Ighovojah v Smyth*, [2016] IEHC 505, [2016] 4 JIC 0703 in support of her argument.

35. The essence of the respondent's argument is encapsulated in paragraph 20 of her written submissions, where it is stated that "if the policy of insurance was not voided outright by the actions of the son driving on a forged driving licence, clearly the use by the son on May 30th, 2014 (the date of his conviction) was an incident of driving that was not covered by an approved policy of insurance, rendering the user and the owner guilty of the offence."

36. The respondent draws further support for her position from *Lyons v Cooney* [1978] I.R.41, also relied upon by the appellant. In the course of his judgment in that case Henchy J had said (*inter alia*) at pp. 50 – 52:

> *"It will be seen, therefore, that when an owner of a vehicle is charged with an offence contrary to s. 56 which is alleged to have been committed when someone else was the user, the offence is not necessarily one of strict liability. Section 56, sub-s. 4, ensures that the owner will be acquitted if, notwithstanding any earlier failure by the user to produce the necessary certificate in response to a demand made under sub-s. 1 of s. 69, the owner produces the certificate at the hearing of the charge. Even if he fails to do that, sub-s. 5 of s. 56 will ensure his acquittal if he shows that the vehicle was used without his consent and that he had taken the steps specified to prevent its use. Granted that the onus of proving those defences lies on the defendant owner, yet the evil of uninsured vehicles on the highway is so great that the legislature obviously thought it proper to impose a vicarious liability on the owner, who was not the user of the uninsured vehicle, if he cannot produce the necessary certificate at the hearing and if he cannot show that the vehicle was used without his consent and either that he had taken all reasonable precautions to prevent its being used or that it was being used by his servant in contravention of his orders. The provisions of sub-ss. 4 and 5 of s. 56 impliedly fix the level of required culpability for the offence on the part of an owner who was not the user of the uninsured vehicle……..*
>
> *Had the defendant come to court and availed himself of sub-s. 4 or sub-s. 5 of s. 56 to show that the vehicle was not uninsured when used or, even if it was, that he had taken the prescribed steps to ensure that it would not be so used, he would have been entitled to an acquittal; but, as he did not do so, the District Justice has no option but to convict.*

37. The respondent's point was that the appellant in this case had equally failed to effectively avail of s.56(4). Yes, the appellant had produced a certificate of insurance, but Garda Barron had been entitled to consider that certificate to determine its scope and effect. The respondent maintains that it was manifest on the face of the certificate (which replicated exactly the policy schedule) that it was a condition of the policy that the insured that the insured was required to ensure that all riders of the motorcycle have a valid licence to ride it, and the insured's son Pawel, who had been stopped while riding it, had failed to produce a valid licence when requested to do so and indeed had produced a forged licence. In the circumstances Garda Barron had been entitled to take the view that the certificate of insurance produced was not evidence of the existence of an approved policy of insurance that covered the use of the motorcycle by the accused's son Pawel on the occasion in question. Contrary to what was submitted on behalf of the appellant the prosecution were therefore entitled to rely on the statutory presumption in s. 56(4). The respondent contends that that presumption was not rebutted in any way by any evidence adduced or relied upon by the appellant.

38. The respondent rejects any suggestion that the appellant's state of knowledge is relevant in this case in circumstances where he did not go into evidence and did not advance any defence to the charge, e.g., that the motorcycle had been used without his consent, or that he had somehow been misled by his son notwithstanding his having made reasonable enquiries. Various authorities are cited in support of this argument by the respondent in her written submissions. However, it is not considered necessary to review them for the purposes of this judgment in circumstances where I accept that state of knowledge is not relevant on the evidence that was before the District Judge.

Decision
39. I am satisfied that the High Court Judge was correct in his judgment and that the appeal against same must be dismissed.

40. The appellant's argument that he ought not to have been convicted because the effect of the breach of the condition in his policy of insurance at issue was to render his contract with his insurer voidable, rather than void, is in my view misconceived and it misses the point.

41. The appellant is of course correct that the condition at issue rendered his policy voidable, rather than void, at the option of the insurer. The respondent has sensibly not sought to argue that the condition was a condition precedent to liability any breach of which would have rendered the contract void ab initio. It is clear from the admonition in the policy schedule that *"Failure to hold a valid licence could result in a claim being declined and your policy cancelled"*, that the insurer is merely retaining the option of repudiation and of treating the contract as voidable.

42. However, as the High Court judge correctly identified, the requirement is not to have just any policy of insurance. It is a requirement to have *"an approved policy of insurance"* as defined in s.62(1) of the Act of 2001. Moreover this approved policy must cover the particular use, of the particular vehicle, by the particular driver on the occasion in question. Critically the insurer must be bound to indemnify the insured in respect of claims arising from the negligent use of the vehicle, subject to the insured having complied with any conditions of the policy. If, however, there has been a breach of a condition the effect of that will have been to

render the policy voidable at the option of the insurer. Clearly, if the insurer has the option of repudiating he is not bound. If a condition has been breached the insurer may, though he is not obliged to do so, decide to repudiate any claim arising and avoid his obligation to indemnify under the policy.

43. Accordingly, a vehicle owner or user can only avoid prosecution and conviction for failing to have an approved policy of insurance in place covering a use of a vehicle by a particular driver by producing a certificate of insurance that makes it clear that the insurer is bound to indemnify.

44. Clearly a Garda to whom a certificate of insurance is produced is entitled to scrutinise that certificate to see what it in fact certifies. If the certificate produced indicates that the provision of the required indemnity may be contingent on compliance by the insured with a stated condition or conditions, then the Garda is entitled to consider the effect of the stated contingency in the circumstances obtaining as they appear to him.

45. In the absence of any *prima facie* evidence of a breach of such condition(s), the Garda making the s.69 demand is entitled to, and would be fully justified in, accepting the certificate as establishing the existence of the necessary approved policy of insurance.

46. However, if the certificate indicates clearly on its face that indemnity is being offered by the insurer on the basis, and in the expectation, that the insured will comply with a specified condition or conditions, the breach of which would render the policy voidable; and the Garda has *prima facie* evidence of breach of such a condition or conditions, then the Garda is not obliged to regard the certificate as providing evidence of the existence of *"an approved policy of insurance"* that *"binds"* the insurer to indemnify the insured concerned in respect of the particular use, of the particular vehicle, by the particular driver on the occasion in question. That was the position that Garda Barron found himself in.

47. In this case I am satisfied that the evidence as to the circumstances in which Garda Barron's demand under s. 69 of the Act of 1961 was made and met, as disclosed in the case stated, was sufficient to enable the District Court Judge to have been satisfied to the standard of beyond reasonable doubt that there had been a failure by Pawel to produce a certificate under s. 66 of the Act of 1961 in respect of an approved policy of insurance that *bound* an insurer to provide an indemnity covering the particular use, of the particular vehicle, by the particular driver on the occasion in question, in response to Garda Barron's lawful s. 69 demand.

48. I further consider that the respondent is correct in her contention that the statutory presumption under s.56(4) of the Act of 1961 arose in the circumstances. Moreover, as the appellant adduced no evidence tending to rebut that which was to be presumed in the circumstances, the District Judge had sufficient evidence entitling him to convict the appellant.

49. In my view the High Court judge was entirely correct in his approach and analysis. The appeal must therefore be dismissed.