

This is a translation, by Professor Zeydel of the University of Cincinnati, of the first part of Dr. Kiesselbach's "Probleme und Entscheidungen der Deutsch-Amerikanischen Schadens-Commission," which appeared in 1927. The present volume presents a survey from the German point of view of the problems which had to be solved by the Mixed Claims Commission at Washington in connection with the establishment of the American claims arising out of the Great War.

CORRESPONDENCE.

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MOTOR-CAR OWNER'S LIABILITY.

THE EDITOR, CANADIAN BAR REVIEW.

SIR.—Adverting to your June, 1929 number, the brief by Mr. G. F. Henderson, K.C., under the above caption raises an intriguing question. The learned King's Counsel, going on to the bearing of the subject upon the liability of Insurance Companies, says: "The standard form policy indemnifies the insured car owner against loss or damage which he shall become legally liable to pay, and unless he is legally liable to pay the Insurance Company cannot be called upon to pay, unless the policy so provides further by what is commonly known as the "omnibus clause."

It may be agreed that none of the varying phrasings of the clause are very satisfactory, but the passenger may be held legally liable where he has control of the car but permits an incompetent driver to operate it.

The really interesting point, however, is the practical one "whether or not there is any contractual relationship between the third person and the Insurance Company, which would justify the third person in bringing an action against the Company."

I seek to reopen the matter in your columns because of an interesting case which has just come into my own practice, in which there is the further interesting complication of the claimant who holds a judgment against the passenger and the driver (neither of whom was the owner) threatening suit against the Insurance Company under section 85 of the Ontario Insurance Act.

It would appear, however, that a plaintiff with an unsatisfied judgment should not have any higher right against the Insurance Company than their debtors and, if it be the case that an 'omnibus' clause, looking to its nature, cannot be devised to constitute any legally binding contract, even the statutory extension of the Insurance Company's liability need not be feared, if such extended liability is derivable only through parties unnamed in the contract of insurance.

Very truly yours,

Montreal.

JAMES B. THOMSON.