

IN THE ROYAL COURT OF JERSEY

106.

Before: Commissioner F. C. Hamon  
Jurat B. Myles  
Jurat J. Orchard

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BETWEEN James Scott PLAINTIFF  
AND Terry Thurston DEFENDANT

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Advocate J. C. Gollop for plaintiff  
Advocate W. J. Bailhache for defendant

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At about 7.30 p.m. on Friday the 29th April two cars were travelling in opposite directions along Rue de la Parade in the Parish of Grouville. The first car which was travelling south was being driven by Mrs. Alma Catherine Scott (nee King) who is the wife of the plaintiff in this action. She was driving a white Peugeot 205 Junior and she had a passenger Mr. Michael Paul Harris. Mrs. Scott had 11 years of accident free driving experience. Although this was a new car - her husband had purchased it two months previously - she was not unaccustomed to this type of car having previously driven a Citroen Dyane. Being a cub leader she had experience of driving a mini bus for the cubs and had passed a test to drive that vehicle for the Education Department. The road conditions were wet as it had rained earlier in the day but at the time the weather was fine with good visibility. She knew the road well as she used it once or twice a month and had lived in that area before she and her husband moved to St. Lawrence. She did not consider the road to be dangerous. She was taking Mr. Harris to pick up his car from a garage at Grouville. The garage had long since closed. She was then going to attend a meeting in that area. Neither she nor her passenger were pressed for time and they both told us that the car was travelling at a slow speed which Mrs. Scott estimated at about 20 to 25 miles per hour. This was, in both her and Mr. Harris' opinion, commensurate with the greasy road conditions and with the type of road. Several cars had passed her car with no difficulty. There were no white markings on the road.

The second car which was travelling north was being driven by Mr. Terry Thurston who is the defendant in this action. His fiancée, now his wife, had lived at the house at the end of Rue de la Parade and he often visited her at her home during 1982 and 1983. He was very familiar with the road. On the evening in question he was going to collect his wife from St. Saviour's Hospital where she worked in the psychiatric unit. She left work at 7.45 so that he was in no particular hurry. He was only five minutes away from her place of work. He was driving a Ford Fiesta, on his estimation, at about 25 - 30 miles per hour. At one stage there was some allegation made by the plaintiff that his driving might have been impaired by his having drunk two bottles of Pils lager with his lunch. This matter was considered by the policeman who investigated the accident and plays no part in our decision.

At this point we have a complete divergence of evidence from the parties. There were no independent witnesses. No photographs were taken and the sketch plan drawn by the investigating police officer was inaccurate in many respects.

The Court visited the scene of the accident at counsels' request. We were surprised at how wide the road was (the police constable's sketch plan estimated the width of the road at its widest part at 14 feet). It is quite clear that had both cars been travelling, as they say they were, at 20 - 25 miles per hour on their correct side then they would have passed each other without the slightest difficulty. This is a fairly busy minor road, such a passing must take place several times a day without difficulty.

When we visited the site both parties disagreed as to where the accident had taken place. As it had occurred almost two years previously and there had very recently been a "branchage" it is perhaps not surprising that memories had faded.

Mrs. Scott told us that when her car came out of the last bend (there is a curve in the road which does obscure the view for a short time), she saw Mr. Thurston's car approaching. He was, in her opinion, travelling fast. She remarked to Mr. Harris "He's going very fast". She slowed her car down. She was not worried but noticed that Mr. Thurston did not seem to slow down at all. She had almost stopped and her vehicle was straight and very near the hedge when Mr. Thurston appeared to apply his brakes. She said that he had ample room to pass. There was what she described as a screech of tyres. The Ford Fiesta appeared to strike the bank, it then swung round and smashed into her car. Mr. Harris confirmed what Mrs. Scott had said. He told us that as the car came out of what he described as "the windy section", the road

straightened out. He saw Mr. Thurston's car coming fast along the road. He felt that he was perhaps better sighted than Mrs. Scott as the car came into the straight. He did not recall her making a remark, although she may have said something. The Peugeot was virtually at a standstill and well into the side of the road when the Fiesta braked very heavily. He heard the noise of the wheels locking on the wet surface. The Fiesta seemed to hit the bank and pivot across the road to hit the front of Mrs. Scott's car. The whole force of the impact went on to the front offside wheel. The bonnet of the Peugeot was raised and both cars suffered very severe damage. Nobody was injured.

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Mr. Thurston told us that as he reached the corner (that is having travelled along the straight part of the road) he was suddenly confronted with the Peugeot well on to his side of the road. He had, in his words "nowhere to go". He had to apply his brakes heavily. The rear of his car broke away and collided with Mrs. Scott's car. The inside front of his car hit the bank. He is not certain which collision occurred first. He hit his head on the windscreen and was slightly dazed but he felt his car roll back down the road slightly. Although the plan showed the cars touching he said that there was a foot between them. He denied that Mrs. Scott's car had stopped moving when the collision took place. He felt that the impact had pushed her car into the bank (the rear of her car, according to the sketch plan, was 1'6" from the bank and the front a matter of inches). Mr. Thurston's car was at an angle across the front of Mrs. Scott's car but there was still (6' according to the sketch plan) room for other cars to pass up and down the road through the gap with little difficulty.

There was a parish hall enquiry. We have decided to ignore the proceedings at the parish hall, although we heard from Centenier Lane of Grouville who issued Mr. Thurston with a written caution. Advocate Gollop drew our attention to Poole v. Edinburgh Unreported 28th November, 1986 but that case is distinguishable by the fact that the Royal Court made clear that the centenier in that case heard statements from the defendant and on those statements the centenier was able to base his decision. As the learned Deputy Bailiff said:-

"While the proceedings at the parish hall are not decisive of the issue of civil responsibility, we believe that the defendant did acknowledge that he failed to attain the standard of care prescribed by law."

In this case the only statement (apart from criticising the sketch plan) made by Mr. Thurston at the parish hall enquiry was to confirm the statement that he made to the police.

"I was doing about 20 mph and I saw a car coming towards me on the left hand bend when it seemed to be more on my side of the road, I pulled to the near side. I braked and skidded, the rear of my car then swung around."

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~~We do not feel that the fact that he received a caution affects the matter that we have to decide one way or the other.~~

We should say that there is much confusing evidence between all the witnesses as to what happened after the accident. For example, Mr. Harris told us that the car was so close to the bank that he could not get out by opening the passenger door. Mrs. Scott got out first and he climbed out on her side. Mrs. Scott said that she had hurt her neck and remained in the car for a short time while Mr. Harris got out on his side. Mr. Thurston told us that he got out of his side of the car, Mrs. Scott was still in her car and Mr. Harris appeared from around the back of the car. He described Mr. Harris as very aggressive and upset. Mr. Harris told us that he was surprised how calm and relaxed he was and that he was not aggressive.

There is further confusion as to who telephoned for the police and who walked up the road to telephone when certainly two telephone calls were made (one to the police and one to the plaintiff). We do not expect, two years after the accident, for memories to be flawless. As it is Mr. Thurston now lives in Essex and Mr. Harris in Guernsey. We have had to assess the witnesses as we saw them in Court. We did not form any impression that any party was trying to mislead the Court.

Of this accident three things are clear. The defendant applied his brakes with some force; his motor car hit the bank on his nearside and his car then swung across the road and hit Mrs. Scott's car causing most severe damage to the right hand front but damaging most of the front of the vehicle with repairs estimated at £3,108.90. The defendant's car was also severely damaged with repairs estimated at £3,050.89.

Once the defendant had applied his brakes, given the greasy surface on the evening in question, a skid was almost inevitable. As is stated in Bingham's motor claim cases (9th Edition) at page 112 "the modern tendency is to regard a skid as placing a heavy onus of proof on the defendant" or as was said in *Richley v. Faull* (1965) 3 All ER 109 "the defendant fails if he does not prove that the skid which took him to the wrong place happened without his default".

Mr. Bailhache in his usual cogent and persuasive manner addressed us fully on the facts. His argument was clear. Confronted on the wrong side of the road, the defendant braked to avoid this emergency, the car skidded and hit ~~the bank and then inevitably swung across the road to make severe contact~~ with Mrs. Scott's car. He went on most helpfully to address us on the second limb of his argument which was the difficult question of contributory negligence (if it applied) and how that should be calculated under the provisions of Article 6 of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1960.

The Court does not need to use the useful guidelines that he supplied. It accepts the evidence of Mrs. Scott and Mr. Harris. The Court finds that the defendant was travelling too fast for the road conditions on the evening in question. He might have been distracted, he might have thought that the gap was not as wide as it was and he applied his brakes too fiercely. The result was almost inevitable. We accept the evidence of Mrs. Scott that she had slowed down and was well on to her side of the road. We cannot see that what she did was anything other than consistent with her showing "mutual respect and forbearance" (*Searle v. Wallbank* (1947) AC 341 at page 361) for other road users. Although the sketch plan is not particularly accurate we cannot see how a collision in the form described to us by Mr. Thurston could possibly have moved Mrs. Scott's car from being well over to the defendant's side of the road to the position in which it ended, close to the hedge and virtually parallel to it. We find it consistent with common sense that Mrs. Scott's vehicle was virtually at a standstill and close to the hedge when the collision occurred.

In the circumstances we find for the plaintiff in the entirety of his claim and dismiss the counterclaim. We award the plaintiff his costs.

### AUTHORITIES

- Lowry -v- Hudson (1972) JJ 2055.
- Charlesworth & Percy on Negligence, seventh edit, Ch. 10, paragraphs 123-131, 135-140 and 154.
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- Bingham's Motor Claims Cases, ninth edit, pp 56-57 and 112-115.
- Poole -v- Edinborough (28th November, 1986) Jersey Unreported.
- Road Traffic (Jersey) Law 1956 (as amended): Article 12.
- Law Reform (Miscellaneous Provisions) (Jersey) Law 1960: Article 6.
- 4 Halsbury 34 paragraphs 68-76 and paragraph 1212.
- Martin -v- de Feu (1964) JJ 383.
- William A. Jay & Sons -v- Veevars Ltd (1946) 1 AER 646.
- Smith -v- W.H. Smith & Sons Ltd. (1962) 1 AER 528
- Richley -v- Faull (1965) 3 All ER 109.
- Searle -v- Wallbank (1947) A.C. 341 at 361.