JUDGMENT

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NEGLIGENCE - DAMAGE TO MOTOR CAR -
NARROW HIGHWAY - FARM TRACTOR -

Friday, 4th February, 1955

1955 1 W.L.R. 255

HAROLD HENRY RANDALL

-v-

REGINALD HUMBY TARRANT

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL.

Royal Courts of Justice,

Friday, 4th February, 1955.

Before:

THE MASTER OF THE ROLLS
(Sir Raymond Evershed)
LORD JUSTICE JENKINS and
LORD JUSTICE MORRIS.

Between:

HAROLD HENRY RANDALL (Appellant: Plaintiff)

-v-

REGINALD HUMBY TARRANT (Respondent: Defendant)

(Transcript of the Shorthand Notes of The Association of Official Shorthandwriters, Limited, Room 392, Royal Courts of Justice, and 2, New Square, Lincoln's Inn, London, W.C.2).

MR. JOHN STOCKER, instructed by Mr. John Holt, appeared for the Appellant (Plaintiff).

MR. GEOFFREY LANE, instructed by Messrs. Horwood & James (Aylesbury), appeared for the Respondent (Defendant).

JUDGMENT

THE MASTER OF THE ROLLS: This case is by no means easy and has raised questions of no little interest. When Mr. Stocker first began to open the appeal I thought that he was faced with a short but fatal answer to the appeal; for this was an action for damages for negligence and there is here a finding by the learned Judge that the Defendant was not negligent. Prima facie that would be a finding of fact from which, in a county court case,

there could be no appeal to this Court; but after further attention to the argument of Mr. Stocker, and after hearing argument also from Mr. Lane, I have now reached a conclusion contrary to that which I was first inclined to entertain.

The facts may be very shortly stated. On 3rd August, 1955, which was August Bank Holiday in that year, the Plaintiff, accompanied by his wife, his son, another lady and a dog, had driven the motorcar which was subsequently damaged from their home until they reached a small byway or lane in the neighbourhood of Windsor. It was about 7 o'clock in the evening. The learned Judge said - there has been no question upon this point - that the lane was a public highway and it led only to farm property. Indeed the fields which lay on either side of the lane were part of the farm to which it led, and we were told that the fee simple in that property belonged to Eton College, the Defendant, a farmer, being the tenant in possession.

The Plaintiff, having driven his car a little way up this narrow highway, drew it into the near side and got out, accompanied by his son and the dog. He left his wife and the other lady passenger in the car. While the car was so stationary in the highway the Defendant, who had been taking advantage of the favourable weather to do some hay-making, drove out of one of the fields into the lane on a tractor to which was attached by means of an articulated coupling a baler, at one end of which there is what is called a string box of a width of 9 feet. The learned Judge found - there has been no question upon this - that having regard to the width of the lane the margin which was allowed for the Defendant to pass the Plaintiff's stationary car without impact was a small one of 6 inches to 9 inches, a margin which the Judge in his own language described as a dangerous margin of safety, a formula, as will presently appear, to which I attach a little significance.

The tractor successfully passed the Plaintiff's motorcar and so did the baler until the string box was reached. Then the string box, as the Judge found, struck the offside wing

of the Plaintiff's car and damaged it. The accident was not serious. The damage to the wing cost some £8 to repair; but the Plaintiff was able to establish as further special damage, having regard to his occupation as a salesman for timber merchants, the cost of hiring another car for a number of days, so that the total damage which the Judge held, if the Plaintiff was entitled
A to recover, properly to be derived from the alleged negligence was £21. 1s. 6d.

There was an acute conflict of evidence upon one matter. The Plaintiff and his son alleged that they were in the road at the time when the accident occurred and that they saw
B what happened. They were perhaps not unnaturally somewhat annoyed and, if I may guess somewhat from the conversation which later took place, the Defendant, also perhaps not unnaturally, became annoyed too. But the Judge quite plainly disbelieved the Plaintiff and the Plaintiff's son. In particular he wholly
C discredited the somewhat extravagant estimate which the son gave of the speed of this tractor pulling a baler in a narrow lane, which the son said was going at no less than 25 miles an hour.

Another matter upon which they were disbelieved has a bearing on a point of great interest taken by Mr. Lane. The
D Judge said (I quote from the note of his Judgment which as amended has been agreed between the two sides): "I am led to believe Plaintiff and son did not see the accident and were, in fact, the other side of the hedge". The significance of that finding is this. On the other side of the hedge was the
E Defendant's field on which was standing hay. The Plaintiff and his son went at some stage clearly into the field, for they were warned to go off it by a policeman. They were in truth trespassers. According to the Defendant, the Plaintiff and his
F son at the time of the accident were still in the field trespassing. The Judge accepted in this matter, and indeed in other matters of conflict, the evidence of the Defendant in preference to that of the Plaintiff and his son.

So far the case appears therefore to be of this character. A man driving a tractor with a large agricultural implement in tow upon a public highway in daylight sees stationary on that highway a motorcar. The question then arises, inevitably where the highway is narrow: Is there or is there not room to pass? If in fact there was no room to pass and passage was
A impossible, and if you have a man who attempts so to do without pausing to make any further investigation, prima facie if, as would be inevitably the result, a collision occurs, I should have thought that the driver must be negligent. Mr. Lane did not contest that proposition. But here there was room to pass.
B There were some 6 inches to 9 inches to spare between the two vehicles when they were passing at the greatest width of the baler; but in regard to that the Judge used this pregnant phrase: "It was a dangerous margin of safety". The Judge added a note about that phrase and I take it to mean that the road being so
C narrow and the baler being so wide, to pass in such circumstances was an enterprise attended with risk. It needed obviously great care if a collision was to be avoided.

In those circumstances what is the evidence of the care taken? Accepting, as the Judge did and as I do, the
D evidence of the Defendant and his servant, Sidney Bride, it seems that as he approached the Plaintiff's motorcar he did reduce his speed to the very low rate of 2 miles an hour or thereabouts. The servant Bride was seated somewhere at the back of the trailed baler. He shouted to the Defendant: "I think we can get through,
E guvnor". Acting upon that cheerful prophecy the Defendant proceeded on his way; but unfortunately the prophecy was falsified and the string box struck the car.

That I think is a fair summary of the evidence, subject only to this. In fact the Defendant said, and was
F believed, that he did not see that there were in the car at the time two persons, the Plaintiff's wife and the other lady. The conclusion which the Judge reached upon that matter and upon that evidence was as follows: (I read again from the jointly agreed

note): "Defendant reduced speed to safety consistent with long vehicle behind him and signals from man behind him and was directed by man and was not guilty of negligence in attempting to pass and proceed on his lawful occasion. It is too much to say should be precluded from moving as he had a small margin of safety. He saw nobody in the car and he had to make up his mind
A to give up or to go on and attempt to do it. He was justified in making the attempt with all possible care and without excessive speed. Not insurer of Plaintiff's car against possibility of its being struck."

It is said by Mr. Lane with no little force that there
B was evidence which justified the conclusion, and the vital conclusion, that he was justified in making the attempt "with all possible care". But in my judgment there was not. A driver along a highway who sees a stationary vehicle or other object on the highway plainly has to take all possible care" to avoid a
C collision and, if there was in fact room to pass but nevertheless a collision occurs, then it seems to me that prima facie he has failed to discharge the duty which those circumstances have laid upon him. I am unable to conclude that by merely reducing the speed and thereafter relying upon the prognostication of the
D servant behind was taking all the care he should have done. It is I hope not illegitimate to have somewhat in one's mind the kind of operation in which so many of us are sometimes engaged when driving a motorcar in or out of a place where there is very little room between other cars. If you have a friend or another
E person available, it is common knowledge that that other person often watches and tells you if as you slowly proceed it is apparent that there is not sufficient room going in the direction or in the line in which you are going. Quite apart from the fact that greater care would have disclosed the presence of the
F two ladies in the car, there is in my judgment no evidence here to support the view that "all possible care" wasin fact taken. It is true, as Mr. Lane suggested, that the impact might have been caused by the fact that some roughness on the surface of the

road threw the trailer slightly off its proper line and thus cast it, so to speak, on to the motorcar. If there had been any evidence that that was so it might well have been that the accident would be properly attributed to something that reasonable care in all the circumstances could not have foreseen, but to suggest that that was the cause is merely to speculate.

A *Prima facie*, given the circumstances of a stationary motorcar on a highway and another car approaching with room to pass, the onus is upon the driver of the motor vehicle if an accident occurs to show that "all possible care" was taken. For if there was in truth room to pass, yet a collision occurred and the moving

B vehicle struck the stationary vehicle, how did it come to do so?

I have read the Judge's phrase "all possible care" but I do not of course forget that in judging of negligence the standard is that of reasonableness. The test is: Given the circumstances which I have tried to state, did the driver take

C all the careful steps which a reasonable man in those circumstances should have taken? I think that in such circumstances the reasonable man would indeed take what may be called in ordinary language "all possible care", at any rate a greater degree of care in my judgment than is shown by the facts of this case which

D I have said amounted to no more than driving at a very slow speed in reliance upon the shouted assurance of Mr. Bride seated somewhere on the baler. Upon that matter therefore I conclude that the Defendant is not here shown to have taken, and there is no evidence to show that he did take, all the steps which reasonably

E ought to have been taken in the given circumstances.

There was another point adumbrated by the Defence. The point was taken by Mr. Lane in this Court and is of this nature. The rights of members of the public to use a highway are *prima facie* rights of passage to and from places which the

F highway adjoins; but equally clearly it is not a user of the highway beyond what is legitimate if, for some purposes at any rate, from time to time a driver of a vehicle upon a highway pauses on the highway. Nobody would suggest to the contrary.

On the other hand this is well established, that you cannot use a highway in quite a different manner from passage along it and do so legitimately merely by the pretext of walking up and down along it. Mr. Lane referred to the well-known case of Hickman v. Maisey, 1900 (1) Queen's Bench, page 752, in which the Defendant, who was the proprietor of a publication which gave to its
A public accounts of the doings of racehorses in training, walked up and down a highway making notes of the performance of the horses in training in order that his paper might be better equipped therewith. It was held that that was not a legitimate
B use of the highway, as such, by a member of the public and, since the racehorses' trainer was in lawful possession of the land adjoining the highway, the Defendant was thereby trespassing.

By analogy to that case Mr. Lane sought to contend thus. He said that on the facts it was found that the Plaintiff
C and his son at the critical point of time were trespassing on the Defendant's field. In so far as they were trespassers themselves on the field the motorcar left standing by them on the highway was equally trespassing. It constituted a part of the trespass of the Plaintiff. In other words, it was no longer a legitimate
D use by the Plaintiff of the highway to put the car there and then to go as a trespasser into the Defendant's fields. Alternatively, Mr. Lane said that the motorcar standing thus on the highway was prima facie an obstruction and therefore a nuisance; and the obstruction could not be justified since its manifest object or
E the activity with which it was shown to be essentially connected was the wrongful activity of the Plaintiff and his son in trespassing on the field. Given those premises, therefore, says Mr. Lane, the standard of care required from the Defendant is for all practical purposes discharged. He owes such a wrongdoer or his
F motorcar no duty of care such as the user of a highway in ordinary circumstances is entitled to demand; his obligation is limited to that which Lord Halsbury thus expressed in the case of Robert Addie & Sons (Collieries) v. Dumbreck (1929 Appeal Cases, page 358,

at page 222 "An occupier in such a case" - that is where a trespasser comes on to the premises - "is liable only where the injury is due to some wilful act involving something more than an absence of reasonable care. There must be some act done with the deliberate intention of doing harm to the trespasser or at least some act done with reckless disregard of the presence
A of the trespasser".

I agree with Mr. Lane that, if the premises are established and that is a correct statement of the consequent extent of liability on the Defendant, beyond doubt the Defendant amply satisfied what was required of him. No similar case has
B been so far before the courts, according to the Reports, or at least so far as the investigations of learned Counsel have discovered. On some future occasion it may be necessary to consider the application of those principles. But in the present case I am satisfied that the facts do not justify the premise of the
C argument. The mere circumstance that, as the Judge found, the plaintiff and his son were on the wrong side of the hedge at the time when the impact occurred, does not seem to me to involve the conclusion that in resting the motorcar where he did on the road and leaving it there the Plaintiff either was in respect of the
D motorcar a trespasser throughout or was by the motorcar's presence committing a nuisance on the highway.

It does not require much imagination to picture the kind of circumstance that so often arises, particularly on a Bank Holiday, where a driver of a motorcar, having driven for some
E time, pauses to rest. He may or may not thereafter do something which is wrong, by which I mean that he may trespass on somebody else's land. But it seems to me to be going in this case altogether too far to hold that the parking of the car was so bound up with the act of trespass which was ultimately proved as
F to make the car itself either the symbol of a trespass or the instrument of a nuisance. I am therefore unable to accept that argument in support of the Judge's conclusion. For the reasons which I have already stated I think on the facts of this case

there was no justification on the evidence for the conclusion which the Judge stated in the language from his judgment which I have earlier read.

I only desire to make one other reference to a case, namely, a case which was heard in this Court, Foster v. Bush Houses, Limited, which is only reported in The Solicitor's Journal, Volume 86, page 765. As I am reported to have said, the case was a most difficult one. It was a case in which a waitress unfortunately stumbled or tripped against the leg of a chair on which a diner was sitting and thereby decanted some soup on to the lady or her dress. The learned Judge in that case held that negligence had not been established. I remember from my participation in it the great difficulty we ourselves entertained and I think I am right in saying that one or more of us expressed the view that if we were trying the case at first instance, upon our understanding of it, we felt strongly disposed to think that we should have come to a different conclusion. But a waitress in a busy restaurant has to work quickly, carrying food; she is apt to be called for by other customers, which inevitably distracts her attention to some extent from where exactly she is going. The case therefore seems to me to be a different kind of case from that of a man driving a tractor in a lane in bright daylight in which lane he sees plain to his view a stationary motorcar. If, as I assume, the Court rightly held in the Foster case that there was evidence to support the Judge's finding acquitting the waitress of want of reasonable care, it does not seem to me to follow that the facts in this case, which I have briefly summarised, equally had the effect of justifying a conclusion of no negligence in favour of the Defendant.

Appreciating the great difficulty of the case, I have on the whole come to the conclusion that the evidence led on the Defendant's side did not discharge the prima facie conclusion from the collision in the circumstances of the case - the conclusion that all reasonable care was not taken by the Defendant. I

therefore think that the Plaintiff should have recovered judgment for £31. 1s. 6d. and I would allow the appeal.

LORD JUSTICE JENKINS: I agree. In my opinion it follows from the facts as found by the learned Judge that as a matter of law the Defendant in this case should have been held guilty of negligence. The Plaintiff's car, an Austin A.40, was drawn up in the lane as close to its near-side as possible; it had a width of 5 feet 3 inches to 5 feet 6 inches as compared with the total width of the lane of only some 15 feet. The baler that the Defendant was towing had a width of 9 feet. It follows that there would be a clearance between the Defendant's vehicle and the Plaintiff's vehicle of only some 6 inches to 9 inches in the event of the Defendant seeking to take his vehicle past the Plaintiff's vehicle where it stood in the lane.

The learned Judge thought that the 6 inches or 9 inches was what he called a dangerous margin of safety, and in his notes for judgment, which are appended to his notes of the evidence in the case, he added a postscript in these terms: "By the rather obscure expression 'dangerous margin of safety' I intended to convey that with only 6 inches to 9 inches maximum clearance available between his own string box and the car's wing the Defendant towing the baler with a tractor could not pass the car without considerable risk of touching it."

I think it must have been obvious to the Defendant, when he did attempt to pass the car, that he was undertaking an operation fraught with considerable risk. In his evidence he said: "When I saw the car, which was unattended, I just thought we could not get through; then I thought we could. My man was on the baler and he shouted: 'I think we can get through, guvnor'". The Defendant said that the car was unattended. In that he was in error. The Plaintiff and his son had left the car, but the Plaintiff's wife and the other lady who made up the party were in the car. The wife was sitting in the driver's seat.

In those circumstances it seems to me that there is

force in the dilemma put against the Defendant. Either there was room to pass or there was not. If there was room to pass then the fact that he damaged the Plaintiff's vehicle in passing was prima facie evidence of negligence. If there was no room to pass, then he was negligent in attempting to do so when there was no room. If the Plaintiff's vehicle had in fact been
A unattended it may very well be that the Defendant would have been justified, having assured himself that it was unattended, in going on his way with all the care he could. It might be unreasonable to expect him to hold up his operations until such time as the owner of the car chose to return. But he took no
B steps to satisfy himself that the car was unattended. If he had taken the simple precaution of stopping his vehicle, going forward and seeing whether there was anyone inside the car, the car could have been driven away to a place which would have allowed the tractor and the baler towed by it sufficient room
C to pass and the accident would never have happened.

Accordingly I agree with the learned Master of the Rolls that the Defendant should here be found guilty of negligence.

As to the defence based on trespass, I need only
D say that I agree that the evidence before the Court has not sufficiently established that the Plaintiff by his motorcar was trespassing on the road or that the car standing on the road was a nuisance. Accordingly it is unnecessary to express any view of the consequences which might have ensued if the presence
E of the car had been shown to be wrongful in either of these two ways. Accordingly I agree that this appeal should be allowed.

LORD JUSTICE MORRIS: I also agree. It seems to me that if there was no room for the Defendant to have passed then he ought not to have proceeded. If there was room to enable him to pass and
F get through in safety, then it seems to me that he should have got through in safety and that a failure to do so convicts him of negligence. For on the facts of this case I can find no material for saying that, in what was, after all, a very ordinary

and often-experienced situation, any entirely unexpected circumstance came into play. In my judgment the evidence showed that there was negligence in the Defendant. There was a failure to take any of the possible courses open to him which a reasonable man could have adopted. He could have stopped. He could have gone to the car. If he had done so he would have found the two
A ladies in it, one of them being at the driving seat. If he had wanted the car moved either the lady was able to move it or her menfolk were within very easy call and they could have moved the car.

If it had not been thought necessary to move the car
B then the Defendant could have put his servant on the road and, with the guidance of his servant so placed, he could have proceeded at such a speed and in such a manner as to avoid touching the stationary vehicle. With the exercise of reasonable care I am confident that no impact in this case need have occurred.

C In my judgment, in the light of the facts as found and the facts admitted, it is not right to say that the Defendant took all reasonable steps but, on the contrary, it is shown that he was negligent and that it was his negligence which resulted in the damage caused to the Plaintiff's car.

D (Appeal allowed; Plaintiff awarded £21. 1s. 6d. damages, costs of appeal and half costs in County Court on Scale 3).

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