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IN THE COURT OF APPEAL

R.M. C. A. 58/77

BEFORE: THE HON. MR. JUSTICE ROBINSON - PRESIDENT
THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE MELVILLE, J.A.

BETWEEN GLADSTONE BURGESS - PLAINTIFF/APPELLANT
AND MARSHALL PETERKIN - DEFENDANT/RESPONDENT

Mr. B.E. Frankson for Plaintiff/Appellant

November 18, 1977

KERR, J.A.

This is an appeal from judgment of the Resident Magistrate for the parish of St. Andrew in a claim and counter-claim between the plaintiff and the defendant. The case arose out of an accident which occurred on Lawrence Avenue in St. Andrew.

The defences as stated on both claim and counter-claim are similar in tenor and substance, - in effect, each side blaming the other for not driving on the proper side of the road and not negotiating the corner at the site of the accident with due care and attention.

The Magistrate, in her judgment, preferred the evidence given by the plaintiff to that of the defendant and his witnesses. It is worthy of note that in her judgment she found, inter alia, that the impact took place on the apex of the curve and the defendant was in fact cutting his corner, that he tried to swing away to his left but plaintiff's car was too close. However, in considering the plaintiff's position she held that even on his own evidence he contributed to the accident.

We are of the view that this is not an unreasonable finding, having regard to the unchallenged damage to the defendant's car and her opinion that the plaintiff could have swerved a little to his left or

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drive a little closer to his left having regard to all the circumstances.

In the circumstances and for those reasons the appeal is dismissed and the judgment of the Resident Magistrate confirmed. The respondent, not having appeared, there will be no order as to costs.