

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 58/90

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

BETWEEN RICHARD CAMPBELL PLAINTIFF/APPELLANT
A N D SYBERT GREEN
ALPHANSO GORDON DEFENDANTS/RESPONDENT

Rudolph L. Francis for Appellant

Mrs. Angella Hudson-Phillips for Respondents

23rd November, 1990

CAREY, J.A.

On the 14th of May, 1983 there was an accident on the main road between Bamboo and Brown's Town in the parish of St. Ann. The plaintiff, who is the appellant in this court, testified before the learned judge Panton J. that he was driving his Ford Mercury motor car licenced WF3921 in the direction of Brown's Town. He was required to take a right hand corner which, to him, was a blind corner, at a time when a truck was approaching him. The driver of the truck apparently lost control of that vehicle and it came and jammed in his right door. The driver of that truck told him he was taking away from a rut.

The defendant's version was altogether different. The driver of that oncoming vehicle was a Mr. Alphanso Gordon. He said that as he was making that bend which was, to him, a left hand corner (he was going up hill) two men signalled him to stop and he complied. The plaintiff's Ford Mercury which was approaching veered a little away from him but ended up in contact with his vehicle. When the vehicles came to rest, the left front wheel of the truck was two feet from his left and the

left front wheel of the car was some six feet from its left or near side. The learned judge accepted the version provided by the driver of the truck and therefore dismissed the plaintiff's claim and found for the defendant on his counter claim. The fact that the truck was laden presented a serious challenge to the manner in which it was being driven and uphill at that.

Mr. Francis has endeavoured to argue before us this morning with great pertinacity, that the learned judge ought to have accepted the version given by his client. In the course of the argument at the Bar, we told Mr. Francis that there was a piece of unchallenged evidence which told in favour of the defendant's version namely, that when the vehicles ended up - and be it noted that when they ended up, they ended up locked together, showed that the front wheel of the truck was some two feet from its near side while the left front wheel of the car driven by the plaintiff was six feet from its near side. In that situation, the learned judge was constrained to come to the view to which he came. At all events, this court, in the face of that evidence has before it material which could justify the finding of the learned judge who had the advantage of seeing and hearing the witnesses before him.

Mr. Francis nevertheless contended that there was some negligence on one part of the driver of the defendant's vehicle, "because he stopped on the left." Speaking for myself, I am not able to appreciate why stopping, could be a contributory factor in the circumstances of this case. The duty of the plaintiff, was so to drive his vehicle, namely, as near as possible to his left that in negotiating the corner, he could be alert to take evasive action in the face of any crisis with which he might be faced. It is not an offence under the Road Traffic Act merely to stop on a road. Under that Act, it is an offence to obstruct

traffic because the law requires that a vehicle parked on a road park as close to its left as is possible. There certainly was no evidence before the judge that this vehicle was obstructing traffic. At all events, his duty in determining liability was to ascertain what was the cause of the accident and the cause of the accident was not the fact that the defendant's vehicle had stopped on the road but the fact that the plaintiff was driving on his incorrect side. That inference is inevitable having regard to the positions in which the vehicles ended up, locked, after their encounter in the corner of the road.

In the result, this appeal must be dismissed and the judgment of the court below affirmed. The respondents are entitled to the costs of this appeal.

WRIGHT, J.A.

I concur.

GORDON, J.A. (AG.)

I concur.