[1964] EWCA Civ 5

Case No.:

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Royal Courts of Justice,

15th June 1964.

B e f o r e :

THE MASTER OF THE ROLLS (Lord Denning),

LORD JUSTICE DANCKWERTS

and LORD JUSTICE DIPLOCK.

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Between:

DOREEN ANN LETANG,

Respondent

-and-

FRANK ANTHONY COOPER,

Appellant

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

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Mr. D.P. CROOM-JOHNSON, Q.C. and Mr DENNIS BARKER (instructed by Messrs Barlow, Lyde & Gilbert) appeared on behalf of the Appellant (Defendant).

Mr. MARTIN JUKES, Q.C. and Mr STANLEY IBBOTSON (instructed by Messrs Brown, Turner, Compton Carr & Co., Agents for Messrs R. Lucas & Sons, Harrow, Middlesex) appeared on behalf of the Respondent (Plaintiff).

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HTML VERSION OF JUDGMENT

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THE MASTER OF THE ROLLS: On the 10th July, 1957, Mrs Letang was on holiday in Cornwall. She was staying at a hotel and thought she would sunbathe on a piece of grass where cars were parked. While she was lying there, Mr Cooper came into the car park driving his Jaguar motor-car. He did not see her. The car went over her legs and she was injured.

On the 2nd February, 1961, more than three years after the accident, Mrs Letang brought this action against Mr Cooper for damages for loss and injury caused by (1) the negligence of the Defendant in driving a motor-car and (2) the commission by the Defendant of a trespass to the person.

The sole question is whether the action is statute-barred. The Plaintiff admits that the action for negligence is barred after three years, but she claims that the action for trespass to the person is not barred until six years have elapsed. The Judge has so held and awarded her £575 damages for trespass to the person.

Under the Limitation Act, 1939, the period of limitation was six years in all actions founded "on tort"; but in 1954 Parliament reduced it to three years in actions for damages for personal injuries, provided that the actions come within these words of Section 2, sub-section (1), of the Law Reform (Limitation of Actions) Act, 1954:

"Actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person".

The Plaintiff says that these words do not cover an action for trespass to the person and that therefore the time bar is not the new period of three years, but the old period of six years.

The argument, as it was developed before us, became a direct invitation to this Court to go back to the old forms of action and to decide this case by reference to them. The statute bars an action on the case, it is said, after three years, whereas trespass to the person is not barred for six years. The argument was supported by reference to text-writers, such as Salmond on Torts, 13th Edition at page 790. I must say that if we are, at this distance of time, to revive the distinction between trespass and case, we should get into the most utter confusion. The old common lawyers tied themselves in knots over it, and we should do the same. Let me tell you some of their contortions. Under the old law, whenever one man injured another by the direct and immediate application of force, the plaintiff could sue the defendant in trespass to the person, without alleging negligence (see Leame v. Bray, in 1803, 3 East, 593), whereas if the injury was only consequential, he had to sue in case. You will remember the illustration given by Mr Justice Fortescue in Reynolds v. Clarke, in 1726 (1 Strange, 634):-

"If a man throws a log into the highway and in that act it hits me, I may maintain trespass because it is an immediate wrong; but if, as it lies there, I tumble over it and receive an injury, I must bring an action upon the case because it is only prejudicial in consequence".

Nowadays, if a man carelessly throws a piece of wood from a house into a roadway, then whether it hits the plaintiff or he tumbles over it the next moment, the action would not be ' trespass or case, but simply negligence. Another distinction the old lawyers drew was this: If the driver of a horse and gig negligently ran down a passer-by, the plaintiff could sue the driver either in trespass or in case: (see Williams v. Holland, in 1833 (10 Bingham, 112); but if the driver was a servant, the plaintiff could not sue the master in trespass, but only in case: see Sharrod v. London and North Western Railway, in l849 (4 Exchequer, 580). In either case to-day, the action would not be trespass or case, but only negligence.

If we were to bring back these subleties into the law of limitation, we should produce the most absurd anomalies; and all the more so when you bear in mind that under the Fatal Accidents Act the period of limitation is three years from the death. The decision of Mr Justice Elwes, if correct, would produce these results: It would mean that if a motorist ran down two people, killing one and injuring another, the widow would have to bring her action within three years, but the injured person would have six years. It would mean also that if a lorry driver was in collision at a crossroads with an owner driver, an injured passenger would have to bring his action against the employer of the lorry driver within three years, but he would have six years in which to sue the owner-driver. Not least of all the absurdities is a case like the present. It would mean that the plaintiff could get out of the three-year limitation by suing in trespass instead of in negligence.

I must decline, therefore, to go back to the old forms of action in order to construe this statute. I know that in the last century Maitland said "the forms of action we have buried but they still rule us from their graves". But we have in this century shaken off their trammels. These forms of action have served their day. They did at one time form a guide to substantive rights; but they do so no longer. Lord Atkin told us what to do about them:

"When these ghosts Of the past stand in the path of justice, clanking their mediaeval chains, the proper course for the Judge is to pass through them undeterred": see United Australia v. Barclays Bank, 1941 Appeal Cases.

The truth is that the distinction between trespass and case is obsolete. We have a different sub-division altogether. Instead of dividing actions for personal injuries into trespass (direct damage) or case (consequential damage), we divide the causes of action now according as the defendant did the injury intentionally or unintentionally. If one man intentionally applies force directly to another, the plaintiff has a cause of action in assault and battery, or, if you so please to describe it, in trespass to the person. "The least touching of another in anger is a battery". If he does not inflict injury intentionally, but only unintentionally, the plaintiff has no cause of action to-day in trespass. His only cause of action is in negligence, and then only on proof of want of reasonable care. If the plaintiff cannot prove want of reasonable care, he may have no cause of action at all. Thus, it is not enough nowadays for the plaintiff to plead that "the defendant shot the plaintiff". He must also allege that he did it intentionally or negligently. If intentional, it is the tort of assault and battery. If negligent and causing damage, it is the tort of negligence.

The modern law on this subject was well expounded by my brother Diplock in Fowler v. Lanning, in 1959 1 Queen's Bench, with which I fully agree. But I would go this one step further: When the injury is not inflicted intentionally, but negligently, I would say that the only cause of action is negligence and not trespass. If it were trespass, it would be actionable without proof of damage; and that is not the law to-day.

In my judgment, therefore, the only cause of action in the present case (where the injury was unintentional) is negligence and is barred by reason of the express provision of the statute.

In case I am wrong about this, and the Plaintiff has a cause of action for trespass to the person, I must deal with a further argument which was based on the opinion of text-writers, who in turn based themselves on a Report of the Committee which preceded the legislation. This was a Committee over which Lord Tucker presided. They reported in 1949. They Recommended that, in actions for damages for personal injuries, the period of limitation should be reduced to two years; but they said:

"We wish, however, to make it clear that we do not include in that category actions for trespass to the person, false imprisonment, malicious prosecution or defamation of character, but we do include such actions as claims for negligence against doctors".

I think the text-writers have been in error in being influenced by the recommendations of the Committee. It is legitimate to look at the Report of such a Committee, so as to see what was the mischief at which the Act was directed. You can get the facts and surrounding circumstances from the Report, so as to see the background against which the legislation was enacted. This is always a great help in interpreting it. But you cannot look at what the Committee recommended, or at least, if you do look at it, you should not be unduly influenced by it. It does not help you much, for the simple reason that Parliament may, and often does, decide to do something different to cure the mischief. You must interpret the words of Parliament as they stand, without too much regard to the recommendations of the Committee: see Assam Railway v. Commissioners of Inland Revenue, 1935 Appeal Cases at pages 458-9. In this very case, Parliament did not reduce the period to two years. It made it three years. It did not make any exception of "trespass to the person" or the rest. It used words of general import; and it is those words which we have to construe, without reference to the recommendations of the Committee.

So we come back to construe the words of the statute with reference to the law of this century and not of past centuries. So construed, they are perfectly intelligible. The tort of "negligence" is firmly established. So is the tort of "nuisance". These are given by the Legislature as sign-posts. Then these are followed by words of the most comprehensive description:

"Actions for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any contract or any such provision)".

Those words seem to me to cover not only a breach of a contractual duty, or a statutory duty, but also a breach of any duty under the law of tort. Our whole law of tort to-day proceeds on the footing that there is a duty owed by every man not to injure his neighbour in a way forbidden by law. Negligence is a breach of such a duty. So is nuisance. So is trespass to the person. So is false imprisonment, malicious prosecution or defamation of character. Professor Winfield indeed defined "tortious liability" by saying that it "arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressible by an action for unliquidated damages": see Winfield on Tort, 7th Edition, page 5.

In my judgment, therefore, the words "breach of duty" are wide enough to comprehend the cause of action for trespass to the person as well as negligence. In support of this view, I would refer to the decision of this Court in Billings v. Reed, 1945 King's Bench, 11, where Lord Greene gave the phrase "breach of duty" a similar wide construction. I would also refer to the valuable Judgment in Australia of Mr Justice Adam in Kruber v. Grzesiak, 1963 Victoria Law Reports, 621. The Australian Act is in the self-same words as ours; and I would, with gratitude, adopt his interpretation of it.

I come, therefore, to the clear conclusion that the Plaintiff's cause of action here is barred by the Statute of Limitations. Her only cause of action here, in my judgment (where the damage was unintentional), was negligence and not trespass to the person. It is therefore barred by the word "negligence" in the statute. But even if it was trespass to the person, it was an action for "breach of duty" and is barred on that ground also.

I would allow the appeal accordingly.

LORD JUSTICE DANCKWERTS: I agree, and I need only add a few words. The question seems to me to be completely covered by the provisions of the Act of 1954, which add a proviso to Section 2, sub-section (1), of the Limitation Act, 1939. I must read the words of the statute again:

"Provided that in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years".

The terms of this provision are very wide, and, in my opinion, cover the case of a claim for damages for trespass to the person of the Plaintiff. It may be true that the statute is limiting rights which a person might possess at common law, but this argument cannot prevail if the meaning of the words of the statute is plain; and, in my view, the words of the statute are plain in their meaning.

I find support for this conclusion in the statement of Lord Greene in Billings v. Reed, 1945 1 King's Bench, page 11, notwithstanding that the similar words there under consideration were in a wartime statute, and no very effective contention seems to have been put forward for a different construction.

In my view, trespass to the person involves a breach of duty, as in the case of any other tort, as Mr Bevan said many years ago in his book on negligence. It would be monstrous if the ghosts of the forms of action (abolished over 90 years ago) compelled us to come to a different conclusion.

I agree also with the other grounds for allowing the appeal discussed by the Master of the Rolls in the earlier part of his Judgment.

I, therefore, also would allow the appeal.

LORD JUSTICE DIPLOCK: A cause of action is simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. Historically the means by which the remedy was obtained varied with the nature of the factual situation and causes of action were divided into categories according to the "form of action" by which the remedy was obtained in the particular kind of factual situation which constituted the cause of action. But that is legal history, not current law. If A., by failing to exercise reasonable care, inflicts direct personal injury upon B., those facts constitute a cause of action on the part of B. against A. for damages in respect of such personal injuries. The remedy for this cause of action could before 1873 have been obtained by alternative forms of action, namely, originally either trespass vi et armis or trespass on the case, later either trespass to the person or negligence. (See Bullen & Leake, 3rd Edition). Certain procedural consequences, the importance of which diminished considerably after the Common Law Procedure Act of 1852, flowed from the plaintiff's pleader's choice of the form of action used. The Judicature Act of 1873 abolished forms of action. It did not affect causes of action; so it was convenient for lawyers and legislators to continue to use, to describe the various categories of factual situations which entitled one person to obtain from the Court a remedy against another, the names of the various "forms of action" by which formerly the remedy appropriate to the particular category of factual situation was obtained. But it is essential to realise that when, since 1873, the name of a form of action is used to identify a cause of action, it is used as a convenient and succinct description of a particular category of factual situation which entitles one person to obtain from the Court a remedy against another person. To forget this will indeed encourage the old forms of action to rule us from their graves.

If A., by failing to exercise reasonable care, inflicts direct personal injuries upon B., it is permissible to-day to describe this factual situation indifferently, either as a cause of action in negligence or as a cause of action in trespass, and the action brought to obtain a remedy for this factual situation as an action for negligence or an action for trespass to the person - though I agree with the Master of the Rolls that to-day "negligence" is the expression to be preferred. But no procedural consequences flow from the choice of description by the pleader: (see Fowler v. Lanning). They are simply alternative ways of describing the same factual situation.

In the Judgment under appeal, Mr Justice Elwes has held that the Law Reform (Limitation of Actions) Act 1954 has, by Section 2(1) created an important difference in the remedy to which B. is entitled in the factual situation postulated according to whether he chooses to describe it as negligence or as trespass to the person. If he selects the former description, the limitation period is three years; if he selects the latter, the limitation period is six years. The terms of the sub-section have already been cited, and I need not repeat them.

The factual situation upon which the Plaintiff's action was founded is set out in the Statement of Claim. It was that the Defendant, by failing to exercise reasonable care (of which failure particulars were given), drove his motor-car over the Plaintiff's legs and so inflicted upon her direct personal injuries in respect of which the Plaintiff claimed damages. That factual situation was the Plaintiff's cause of action. It was the cause of action "for" which the Plaintiff claimed damages in respect of the personal injuries which she sustained. That cause of action or factual situation falls within the description of the tort of "negligence" and an action founded on it, that is, brought to obtain the remedy to which the existence of that factual situation entitles the Plaintiff, falls within the description of an "action for negligence". The description "negligence" was in fact used by the Plaintiff's pleader; but this cannot be decisive, for we are concerned not with the description applied by the pleader to the factual situation and the action founded on it, but with the description applied to it by Parliament in the enactment to be construed. It is true that that factual situation also falls within the description of the tort of "trespass to the person". But that, as I have endeavoured to show, does not mean that there are two causes of action. It merely means that there are two apt descriptions of the same cause of action. It does not cease to be the tort of "negligence" because it can also be called by another name. An action founded upon it is none the less an "action for negligence" because it can also be called an "action for trespass to the person".

It is not, I think, necessary to consider whether there is to-day any respect in which a cause of action for unintentional as distinct from intentional "trespass to the person" is not equally aptly described as a cause of action for "negligence". The difference stressed by Mr Justice Elwes that actual damage caused by failure to exercise reasonable care forms an essential element in the cause of action for "negligence", but does not in the cause of action in "trespass to the person", is, I think, more apparent than real when the trespass is unintentional; for, since the duty of care, whether in negligence or in unintentional trespass to the person, is to take reasonable care to avoid causing actual damage to one's neighbour, there is no breach of the duty unless actual damage is caused. Actual damage is thus a necessary ingredient in unintentional as distinct from intentional trespass to the person. But whether this be so or not, the sub-section which falls to be construed is concerned only with actions in which actual damage in the form of personal injuries has in fact been sustained by the plaintiff. Where this factor is present, every factual situation which falls within the description "trespass to the person" is, where the trespass is unintentional, equally aptly described as negligence.

I am therefore of opinion that the facts pleaded in the present action make it an "action fop negligence ... where the damages claimed by the plaintiff for the negligence ... consist of or include damages in respect of personal injuries to" the plaintiff, within the meaning of the sub-section, and that the limitation period was three years.

In this respect I agree with the Judgment of Mr Justice Adam in the only direct authority on this point, the Victorian case of Kruber v. Grzesiak (1963 2 V.L.R,, 621). To his lucid reasoning I am much indebted. This is yet another illustration of the assistance to be obtained from the citation of relevant decisions of Courts in other parts of the Commonwealth, and I am particularly grateful to Counsel for the Appellant and those instructing him for drawing our attention to this case. But I agree with my brethren and with Mr Justice Adam that this action also falls within the words "action .. for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any contract or any such provision)". I say "also falls", for in the absence of the word "other" before "breach of duty" that expression as explained by the words in parenthesis is itself wide enough to include "negligence" and "nuisance".

In their ordinary meaning, the words "breach of duty" MS so explained are wide enough to cover any cause of action which gives rise to a claim for damages for personal injuries, as Lord Greene in Billings v. Reed said of very similar words in the Personal Injury (Emergency Provisions) Act, 1939. Why should one give them a narrower and strained construction? The Act is a limitation Act; it relates only to procedure. It does not divest any person of rights recognised by law; it limits the period within which a person can obtain a remedy from the Courts for infringement of them. The mischief against which all limitation Acts are directed is delay in commencing legal proceedings; for delay may lead to injustice, particularly where the ascertainment of the relevant facts depends upon oral testimony. This mischief, the only mischief against which the section is directed, is the same in all actions in which damages are claimed in respect of personal injuries. It is independent of any category into which the cause of action which gives rise to such a claim falls. I see no reason for approaching the construction of an enactment of this character with any other presumption than that Parliament used the words it selected in their ordinary meaning and meant what it chose to say.

Counsel for the Plaintiff has, however, submitted that an action for trespass to the person is not an action for "breach of duty" at all. It is, he contends, an action for the infringement by the Defendant of a general right of the Plaintiff; there is no concomitant duty upon the Defendant to avoid infringing the Plaintiff's general right. This argument or something like it, for I do not find it easy to formulate, found favour with the learned Judge. He drew a distinction between what he described as a "particular duty" owed by a particular defendant to a particular plaintiff which he said, no doubt with Bowhill v. Young in mind, was an essential element in the cause of action in negligence, and a "general duty" not to inflict injury on anyone; but to describe the latter, which is merely the obverse of the Plaintiff's cause of action in trespass to the person, as a "duty" was, he thought, not to use the language of precision as known to the law.

I would observe in passing that a duty not to inflict direct injury to the person of anyone is by its very nature owed only to those who are within range - a narrower circle of Atkinsonian neighbours than in the tort of negligence. But in any event this distinction between a duty which is "particular" because it is owed to a particular plaintiff and a duty which is "general" because the duty owed to the plaintiff is similar to that owed to everyone else is fallacious in relation to civil actions. A. has a cause of action against B. for any infringement by B. of a right of A. which is recognised by law. Ubi jus,ibi remedium. B. has a corresponding duty owed to A. not to infringe any right of A. which is recognised by law. A. has no cause of action against B. for an infringement by B. of a right of C. which is recognised by law. B. has no duty owed to A. not to infringe a right of C., although he has a duty owed to C. not to do so. The number of other people to whom B. owes a similar duty cannot affect the nature of the duty which he owes to A. which is simply a duty not to infringe any of A.'s rights. In the context of civil actions a duty is merely the obverse of a right recognised by law. The fact that in the earlier cases the emphasis tended to be upon the right and in more modern cases the emphasis tends to be upon the duty merely reflects changing fashions in approach to juristic as to other social problems, and must not be allowed to disguise the fact that right and duty are but two sides of a single medal.

An alternative way of narrowing the construction of these wide general words which I think was also present to the mind of the learned Judge was to apply the principle of noscitur a sociis and, because the cause of action in both negligence and nuisance involves the infliction of actual damage as an essential element, to construe "breach of duty" as limited to breaches of duty giving rise to causes of action in which the infliction of actual damage is an essential element. The maxim noscitur a sociis is always a treacherous one unless you know the societas to which the socii belong. But it is clear that "breach of duty" cannot be restricted to those giving rise to causes of action in which the infliction of actual damage is an essential element, for the words in parenthesis expressly extend to a duty which exists by virtue of a contract and the infliction of actual damage is not an essential element in an action for breach of contractual duty.

Really, the only argument for cutting down the plain and wide meaning of the words "breach of duty" is that to do so renders the inclusion of the specific torts of negligence and nuisance unnecessary. But economy of language is not invariably the badge of parliamentary draftsmanship. Negligence and nuisance are the commonest causes of action which give rise to claims for damages in respect of personal injuries. To mention them specifically without adding the word "other" before "breach of duty" is not in itself sufficient to give rise to any inference that the wide general words were not intended to cover all causes of action which give rise to claims for damages in respect of personal injuries; particularly when the same combination of expressions in a similar context had already been given a very wide interpretation by the Court of Appeal.

On these grounds I would hold that the limitation period for this action was three years and would allow the appeal.

Order:- Appeal allowed; Judgment entered for the Defendant, with costs in the Court of Appeal and in the Court below, the Order for costs not to be executed except on further application to the Court of Appeal. Payment out to the Defendant of the £575 in Court. Legal Aid taxation on behalf of the Plaintiff. Leave to appeal to the House of Lords refused.