

59/78

COURT OF APPEAL (UK) — CIVIL DIVISION

FOOKES v SLAYTOR

Stamp, Orr LJJ and Sir David Cairns

9 June 1978

[1979] 1 All ER 137; [1978] 1 WLR 1293; [1979] RTR 40; MC34/79

NEGLIGENCE – CONTRIBUTORY NEGLIGENCE – APPORTIONMENT OF LIABILITY – JURISDICTION – DEFENCE OF CONTRIBUTORY NEGLIGENCE NOT PLEADED – WHETHER COURT CAN APPORTION LIABILITY IN ABSENCE OF SUCH A PLEA.

The vehicle which the plaintiff was driving ran into the rear of a parked articulated vehicle. It was dark and the articulated vehicle was unlit. He brought an action for damages for personal injuries. The driver of the articulated vehicle filed no defence and was debarred from defending after failing to comply with a court order to deliver a defence. The judge found that the plaintiff was one-third to blame for the accident and reduced the damages accordingly. On appeal by the plaintiff, **HELD**, in the absence of pleading by the defendant, the court had no jurisdiction to make a finding of contributory negligence on the plaintiff's part. The defence was only available if it was pleaded. The appeal would be allowed.

Fookes v Slaytor (1978) Times, 19th June (Court of Appeal: Stamp and Orr LJJ and Sir David Cairns).
