STEWART v. HANCOCK, [1940] 2 ALL E.R. 427.

This was an appeal to the Privy Council from the Court of Appeal of New Zealand. The appellant, while riding his motor-cycle along a main highway, collided with the rear of an unlighted stationary automobile owned by the respondent. On the other side of the road was another stationary car facing in the opposite direction and showing lights. The appellant reduced his speed to about 25 miles per hour when approaching this latter car, and, after passing out of the beams of its headlights, saw the respondent's car, braked and swerved, but collided with its near-side rear mudguard, and sustained injuries, in respect of which he brought this action. The negligence of the respondent in failing to have the rear-light of his car turned on was clear ; but he sought to avoid liability by alleging that the appellant was guilty of contributory negligence in failing to keep a proper look-out and in proceeding as he did when dazzled by the lights of the second car, and that it was this contributory negligence which was the proximate cause of the accident. The trial judge, in orthodox terms, directed the attention of the jury to this issue, and they returned a verdict for the appellant. The Court of Appeal, however, ordered that judgment should be entered for the respondent, on the ground that it was conclusively proved that the proximate cause of the accident was the appellant's own negligence, and that the verdict of the jury was so unreasonable as to be perverse. The appellant thereupon appealed to the Privy Council, which ordered the original judgment to be restored, on the ground that there was proper and ample evidence before the jury to warrant their finding that, having regard to the dangerous situation created by the respondent's negligence, the appellant had not behaved otherwise than as a reasonable man having due regard for his own safety.

At first sight it seems amazing that the Court of Appeal could, on the particular facts, have concluded that the evidence was such that no body of reasonable men could find otherwise than that the appellant was guilty of contributory negligence Apparently the Court was obsessed by the famous dilemma propounded by Scrutton L.J. in *Baker v. Longhurst*, namely : " If a person rides in the dark he must ride at such pace that he can pull up within the limits of his vision, and if, in these circumstances, he strikes something, either he is going too fast or he has not been keeping a proper look-out."[1] But in England, the Court of Appeal had already repudiated[2] this attempt to lay it down as a rule of law that where the plaintiff drives a vehicle into an unlighted obstruction he must in all cases be guilty of contributory negligence, and therefore be disqualified from relief. The importance of the instant case lies in the fact that it sets the stamp of approval of the highest court in the dominion judicial hierarchy on the rational doctrine that it is always a question of fact whether, in the particular circumstances, the conduct of the plaintiff in driving into an unlighted obstruction amounts to contributory negligence. The Board adopted the remarks of Macnaghten J. in *Tidy v. Battman*.[3] " At night time the visibility of an unlighted obstruction to a person driving a lighted vehicle along the road must necessarily depend on a variety of facts, such as the colour of the obstruction, the background

1. [1933] 2 K.B. 461 at p. 468.
2. *Tidy v. Battman*, [1934] 1 K.B. 319.
3. at pp. 320-1.

against which it stands, and the light coming from other sources. . . . It cannot, I think, be said that where there is an unlighted obstruction in the roadway, a careful driver of a motor vehicle is bound to see it in time to avoid it, and must therefore be guilty of negligence if he runs into it."[4] And as the jury is the sole judge of questions of fact (subject, of course, to the courts' power to refuse to allow the issue to be left to the jury if it believes that there is insufficient evidence from which to infer negligence, or to direct a finding of contributory negligence if it believes the evidence to point overwhelmingly in that direction) its findings should be respected. In the words of Lord Roche, delivering the opinion of the Board: "The question, it need hardly be said, is not whether their Lordships would have arrived at the same conclusion as that at which the jury arrived after seeing and hearing the witnesses, but whether the jury arrived at an unreasonable conclusion, or one unsupported by evidence fit for their consideration."[5] In the instant case was the evidence such that twelve fair-minded citizens could have reached the decision in fact reached? As to this, Lord Roche felt no doubt but that there was ample evidence before the jury from which they might infer that the collision was caused neither by appellant's failure to keep a proper look-out, nor by his travelling at an excessive speed. The lights of the second car prevented him from appreciating the danger till it was too late and, having regard to the fact that, so far as all appearances could show, that car seemed to be the only one on the road, 25 miles per hour was not an excessive speed.

One's first feeling after reading this case is that too heavy a price in costs was paid for the benefit of having settled any lingering doubts as to the respective functions of judge and jury in negligence cases. But perhaps the money was well spent when one considers that the decision does in effect emphasize the fundamental doctrine that the requirement of due care as an element in the law relating to negligence must remain a flexible standard to be applied as such to the ever-changing circumstances of daily life in a complex dynamic society, and that the courts will reject any attempt to crystallize into categorical rules the circumstances in which negligence or contributory negligence must be found to exist. So regarded *Stewart v. Hancock* slips into an important niche alongside cases such as *Henwood v. Municipal Tramways Trust*[6] in the structure of our law of Torts.

—N. LANDAU.

4. The remarks and the decision were approved by the Court of Appeal, *supra*.
5. [1940] 2 All E.R. at p. 432.
6. [1938] A.L.R. 312.