

In the House of Lords

Fussy -v- Tremens

Fussy lent his brand new Ferrari Testosterone (which cost £500,000) to his friend Staid so that he might visit his aunt in the country. Losing his way, Staid decided to stop and ask directions. Seeing a drive leading off the highway to a large house, Staid drove the car in, parked it and walked to the house door.

The property, Dunkillin, is occupied by an eccentric Retired General, Sir Delirium Tremens. His passion remains tank driving, which he undertakes at high speed within his substantial grounds. While Staid was at the front door, Sir Delirium - without looking where he was going - drove over the Ferrari, flattening it beyond repair.

Sir Delirium was party to a contract of insurance with the Welsh Widowers Insurance Company. By its terms the company undertook inter alia to indemnify the insured in respect of his liability for negligence (1) in his capacity as occupier of private premises up to a maximum of £100,000 and (2) in any other capacity up to a maximum of £500,000. Fussy sued Sir Delirium in tort for negligence at Common Law and under the Occupiers' Liability Act 1957.

At trial, Brusque J. found for the plaintiff's Common Law action, ordering the defendant to pay £500,000 in damages. The defendant's appeal to the Court of Appeal was upheld: first, on the basis that the 1957 Act was to be applied and, second, that a non-entrant to premises receives no statutory protection from the said Act.

Fussy now appeals to the House of Lords on the following two grounds:

1. That a person who suffers loss or damage to his property to the negligence of the occupier of the premises on which the loss or damage occurs may sue under the Occupiers' Liability Act 1957 notwithstanding that the Plaintiff himself does not enter the premises.
2. That a Common law negligence action arising out of an injury or damage on premises as a result of some negligent activity has not been entirely subsumed by the 1957 Act.

This problem is taken from the semi-final of the Observer-ESU-Lovell White Durrant Mooting Competition 1996-97, and was provided courtesy of the English Speaking Union.