

IN THE SUPREME COURT OF THE WINDWARD ISLANDS AND
LEEWARD ISLANDS.

(ANTIGUA CIRCUIT)

Suit No. 16 of 1951.

Between:—

JOSEPH MERCHANT *Plaintiff.*
and
SYDNEY THEOPHILUS CHRISTIAN *Defendant.*

Suit No. 20 of 1951.

Between:—

SYDNEY THEOPHILUS CHRISTIAN *Plaintiff.*
and
JOSEPH MERCHANT *Defendant.*

Before: DATE, J.

J. R. HENRY for Merchant
E. E. HARNEY for Christian

JUDGMENT.

These two actions, which are being tried together with the consent of the parties, arise out of a collision which occurred at the intersection of Long and Market Streets in the City of St. John on 7th April, 1951, between motor truck A. G. 151, owned by Joseph Merchant, and motor car A. G. 171, owned and driven by Sydney Theophilus Christian. Merchant's truck was being driven by his son and was travelling westwards along Long Street; Christian's car was going from north to south along Market Street. The damage sustained by the car was much greater than that sustained by the truck. Each party claims that the collision was caused by the negligence of the driver of the other vehicle. In suit No. 16 of 1951 (Merchant *v.* Christian) the negligence alleged against Christian is that he—

- (a) did not stop "as he is required to do";
- (b) did not slow down or keep a proper look out.

In suit No. 20 of 1951 (Christian *v.* Merchant) the negligence alleged against the driver of Merchant's truck is that he—

- (a) failed to blow his horn or give other warning or signal of his approach;
- (b) drove the truck at an excessive rate of speed while approaching the corner of Long and Market Streets;
- (c) failed to keep any proper look out for cars travelling along Market Street;
- (d) failed to keep his proper side of the street when approaching the Corner of Market and Long Streets;
- (e) failed to keep his truck under proper control;
- (f) failed to stop his truck or so to manipulate it as to pass Christian's car then at a standstill without colliding with it.

Apart from denying the allegations of negligence levelled against him, each party has, in his defence, pleaded contributory negligence, Merchant stating, in addition to the negligence alleged by him in Suit No. 16 of 1951, that Christian "without any warning, drove from Market Street into the intersection of the said Long Street and Market Street, blocked his right of way and thereby caused the accident."

It is admitted by Christian that he neither blew his horn nor stopped his car on reaching the junction of Long and Market Streets. His estimate of the speed at which Merchant's truck was coming down Long Street is, perhaps, on the high side, and I am satisfied that the horn of the truck was sounded just before the accident; in all other respects, however, I regard the account of the accident given by Christian as accurate and reliable. In his examination in chief he said: "I was driving at less than 10 miles per hour—at about 5, 6 or 7 miles per hour. On reaching the corner of Long Street I looked right and saw nothing coming up. I continued going. I then looked left and there was truck 151 coming down Long Street at about 40 miles per hour. It was a little beyond the corner of Corn Alley when I first saw it. It never occurred to me it would pass Market Street at that speed; but seeing it approaching I stopped my car—about midway across Long Street. The truck struck my left front wheel and fender, driving my car to the right, some distance down Long Street. My recollection is that my car was not in gear; I had taken it out of gear automatically on stopping. I had to put on my brakes to stop my car after it was struck. The truck swerved slightly to the left after the collision, heading to the telephone post at the south-western corner of Market and Long Streets and ending up with its bumper against the electric light post.....I have never seen a copy of Exhibit D before today. Never seen it published in the *Gazette* or any newspaper. When I saw the truck it was to the right of the centre of Long Street. There were vehicles parked on both sides of the street." Under cross-examination he said: "The truck did not slow down at all. One thought entered my mind: I may get killed.....I do not consider I have a duty to stop at the corner of Market and Long Streets. I have a duty to proceed with care and slowly.....to slow down and look in both directions to see whether there