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~~6-11-62~~

Judgment  
S, 1959

IN THE PRIVY COUNCIL

No. 3 of 1958

ON APPEAL

FROM THE SUPREME COURT OF BERMUDA

---

B E T W E E N :

JOHN WESLEY PHIPPS (Defendant) Appellant

- and -

WINSTON EVERARD EUGENE POWELL,  
an infant, by George Thomas  
Everard Powell, his next friend  
(Plaintiff) Respondent

---

RECORD OF PROCEEDINGS

---

THEODORE GODDARD & CO.,  
5, New Court,  
Lincoln's Inn,  
London, W.C.2.  
Solicitors for the  
Appellant.

WOODCOCK RYLAND & CO.,  
15, Bloomsbury Square,  
London,  
W.C.1.  
Solicitors for the  
Respondent.

IN THE PRIVY COUNCILNo. 3 of 1958

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WINSTON EVERARD EUGENE POWELL,  
an infant, by George Thomas  
Everard Powell, his next friend  
(Plaintiff) RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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(d)	Notice of Trial	31st August, 1957
(e)	Affidavit of Attorney for the Defendant on Motion for Final Leave to Appeal to Her Majesty in Council	24th January, 1958

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL  
BUT NOT PRINTED

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Judge's Notes of argument of Counsel for the Plaintiff and of Counsel for the Defendant	18th September, 1957

IN THE PRIVY COUNCIL

No. 3 of 1958

ON APPEAL

FROM THE SUPREME COURT OF BERMUDA

B E T W E E N :

JOHN WESLEY PHIPPS (Defendant) Appellant

- and -

WINSTON EVERARD EUGENE POWELL,  
an infant, by George Thomas  
Everard Powell, his next friend  
(Plaintiff) Respondent

10

RECORD OF PROCEEDINGS

No. 1.

WRIT OF SUMMONS

In the  
Supreme Court  
of Bermuda

IN THE SUPREME COURT OF BERMUDA

1957 No. 9.

No. 1.

Writ of Summons,  
4th February  
1957.

B E T W E E N :

WINSTON EVERARD EUGENE POWELL  
an infant, by George Thomas  
Everard Powell, his next friend Plaintiff

20

- and -

JOHN WESLEY PHIPPS ... Defendant

ELIZABETH II, By the Grace of God of the United  
Kingdom of Great Britain and Northern Ireland and  
of our other realms and territories Queen, Head of  
the Commonwealth, Defender of the Faith

Seal of  
The Supreme  
Court of  
Bermuda

TO

John Wesley Phipps  
of Pembroke Parish

30

WE COMMAND YOU that within eight days after the  
service of this writ on you, inclusive of the day

In the  
Supreme Court  
of Bermuda

No. 1.

Writ of Summons,  
4th February  
1957 -  
continued.

of such service you do cause an appearance to be entered for you in an action at the suit of Winston Everard Eugene Powell and take notice that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS the Honourable Sir Trounsell Gilbert, Kt., C.B.E. Chief Justice of Our said Court, the fourth day of February in the year of our Lord One thousand nine hundred and fifty-seven.

N.B. This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards. 10

The Defendant may appear hereto by entering an appearance, either personally or by attorney, at the office of the Registrar of the Supreme Court at the Sessions House, Hamilton.

E N D O R S E M E N T

THE PLAINTIFF CLAIMS damages for personal injuries caused by the Defendant's negligence. 20

This writ was issued by Gray & Smith, of Reid Street Hamilton, Attorneys for the Plaintiff, whose address for service is the same.

The Plaintiff resides at Cox's Hill, Pembroke West.

This writ was served by me at Hamilton City

On the Defendant

on Tuesday the 5th day of February, 1957.

Indorsed the 5th day of Feb. 1957.

Sgd. Donald Macdonald  
for Provost Marshal General 30

I, Robert Gordon Henderson, Provost Marshal General, Authorise Donald Macdonald of Police, to serve this Writ.

Sgd. R.G. Henderson  
Provost Marshal General  
5.2.57.

No. 2.

CONSENT OF NEXT FRIEND

In the  
Supreme Court  
of Bermuda

No. 2.

The 2nd day of February, 1957.

Consent of next  
friend,  
2nd February  
1957.

I, George Thomas Everard Powell, of Cox's Hill, Pembroke Parish, stone mason, do hereby authorise Messrs. Gray & Smith, attorneys for the Plaintiff in the above entitled action, to use my name as next friend of the above named Plaintiff, Winston Everard Eugene Powell, who is my son.

10 SIGNED by the said George )  
Thomas Everard Powell in ) Sgd. George Powell.  
the presence of: )

Sgd. Donald C. Smith  
of the Plaintiff's attorneys, Gray & Smith.

and I the said Donald C. Smith do hereby certify that the said George Thomas Everard Powell has no interest in the said action which may be adverse to the infant Plaintiff.

Sgd. Donald C. Smith.

20

No. 3.

STATEMENT OF CLAIM

No. 3.

Statement of  
Claim,  
4th February  
1957.

1. The Plaintiff is an infant, aged nineteen years, and sues by his next friend George Thomas Everard Powell, his father.

2. On the 30th May, 1956, the Plaintiff was being driven as a pillion passenger by the said George Thomas Everard Powell on his motor bicycle along Cedar Avenue, City of Hamilton, in a southerly direction.

30 3. The Defendant, on the day aforesaid, negligently drove his private car, No. P6150, from Angle Street into Cedar Avenue thereby causing the said

In the  
Supreme Court  
of Bermuda

No. 3.

Statement of  
Claim,  
4th February  
1957 -  
continued.

cyclist to swerve violently, throwing the Plaintiff violently onto the roadway.

PARTICULARS OF NEGLIGENCE

(1) The Defendant in driving his said car from Angle Street into Cedar Avenue failed to exercise due caution and to keep a proper lookout.

(2) The Defendant's car emerged suddenly into Cedar Avenue at so short a distance in front of the said bicycle as to cause the cyclist, in an attempt to avoid a collision with the Defendant's car, to swerve violently into Angle Street. 10

(3) In consequence of the Defendant's said negligence the Plaintiff, by falling as aforesaid, suffered serious personal injuries of a permanent nature and has incurred great financial losses and expenses.

PARTICULARS OF INJURIES

(1) The Plaintiff sustained a fracture of the first lumbar vertebra of the spine and permanent damage to the nerves of the bladder. 20

(2) The Plaintiff was confined to hospital from 30th May to 23rd July, 1956, and suffered much pain and discomfort while in a plaster cast and also after the removal thereof.

(3) From the said nerve injuries the Plaintiff has suffered and in all probability at all times will suffer pain and much discomfort and will be incapable of leading a normal life and of taking well paid employment.

(4) The Plaintiff, who was a skilled mason's labourer, earning about £15 weekly, has been incapable of taking gainful employment of any sort until 1st December, 1956, since which date his wages, as a post office employee, have not exceeded £11 weekly. 30

PARTICULARS OF SPECIAL DAMAGES

(1) Cost of hospitalization	£117.14. 0	
(2) Medical expenses	55. 0. 0	
(3) Loss of wages from 1st June to 30th November, 1956 at £15 weekly	420. 0. 0	40
(4) Loss of wages from 1st December, 1956, to 31st January, 1957, at £4 weekly	32. 0. 0	
	<u>£624.14. 0</u>	

(5) The Plaintiff claims £10,000 damages.



No. 4.

DEFENCEIn the  
Supreme Court  
of BermudaNo. 4.Defence,  
25th February  
1957.

1. The Defendant does not admit the facts set out in paragraphs 1 and 2 of the Statement of Claim.

2. In regard to paragraph 3 of the Statement of Claim and the particulars of negligence therein set out the Defendant admits that he was driving his private car, No. P 6150, on the day alleged and generally in the location referred to in the said paragraph, but denies that he drove his car negligently as alleged or that any action of the Defendant caused the Plaintiff's next friend to swerve or to fall. The Defendant specifically denies the particulars of negligence alleged and any negligence.

3. The Defendant says that the cause of the accident was the negligence of the Plaintiff's next friend in that he was driving the said cycle at an excessive speed, failed to keep proper lookout, and failed to have proper control of the said cycle.

4. The Defendant does not admit the injuries alleged by the Plaintiff nor the particulars thereof nor the particulars of special damage set out in the Statement of Claim, and says that if the Plaintiff suffered damage the cause thereof was not the Defendant.

Dated the 25th day of February, 1957.

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In the  
Supreme Court  
of Bermuda

JUDGE'S NOTES.

PLAINTIFF'S EVIDENCE

Judge's Notes.

Plaintiff's  
Evidence.

No. 5.

W.E.E. Powell,  
Examination.

Monday, 16th September, 1957.

Mr. Smith:- 30th May, 1956. Plaintiff pillion on father's cycle. Coming into Hamilton along Cedar Avenue, Defendant came out from Angle Street causing Plaintiff's driver to swerve into Angle Street.

No. 5.

EVIDENCE OF W.E.E. POWELL

Winston Everard Eugene Powell. (Sworn):- Plaintiff, 10  
aged 19. Son of George Thomas Everard Powell.  
Bermudian. Live Cox's Hill, Spanish Point with  
parents.

Prior to May 1956 I was a mason's labourer, skilled, intending to follow mason's trade like father. Working with father. Wages £15 a week. Steady employment.

On 30th May, 1956, going to work, riding pillion on father's cycle. Usual method of going to work. That day we were going to work at a house near Devil's Hole. Father was to drop me at bus stop by Post Office in Hamilton and I was to proceed by bus. It was then nearly 7.0 a.m. Bus due to leave some time after 7.0. 20

Exhibit "B"

We were coming into town along Cedar Avenue and on the way overtook two cyclists on auxiliary cycles. I think they were boys - young men. Overtook them somewhere opposite Mount St. Agnes School. Saw a car come up the first road coming from the left and stop at the "Stop" sign. Car then pulled out into Cedar Avenue, but the car seemed to be moving sluggishly. I don't know which way the car intended to turn. 30

When the car started to move we were then about opposite the convent gate at the corner of Cedar Avenue and Laffan Street. At that time we had already passed the cyclists and way down Cedar Avenue

there was a bus coming towards us. That was the only other traffic.

Car came out into Cedar Avenue and appeared to stall with its back bumper about in line with sidewalk opposite St. Theresa's.

Father braked and swerved into the street on the left from which the car had emerged.

I can't say if car stopped completely or not.

10 When bike swerved I was thrown off into the road and father went on and hit the wall somewhere behind the car.

I was sitting astride the pillion seat.

I believe father lost control for a second and the cycle jerked. When he braked there was one jerk and I fell forwards towards him and then there was another jerk as if the cycle accelerated again and I fell off backwards into the road. I fell on bottom of my spine. It was a heavy fall. Cycle is a "Sun" and a normal type.

20 I next remember my father coming to me. I was still lying in the road and couldn't get up. I was on the south side of the centre of Angle Street and not far from the wall and behind the Stop sign. The driver of the car got out and came to me. Didn't know him. He was a coloured man. Didn't see anyone else in car. A small argument started between my father and the car driver as to what to do with me. They put me into the car and father and the driver took me to hospital. I had to be lifted into the car. Defendant is the driver of the car.

30

I was winded by the fall and couldn't move.

I started to feel pain at base of spine after I was put to bed in hospital. Dr. Ashdown attended me. Kept in hospital nearly two months.

40

This is one of my hospital bills, £117.14. 2d for the period 1st June - 23rd July. I was in pain most of the time. I know I had a fracture of the bottom part of the spine which made the lower part of the body numb for a time. My buttocks are still numb. I also had bladder trouble. I understood the nerves were affected and I couldn't pass water properly.

I still have difficulty in passing water and I

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Plaintiff's  
Evidence.

No. 5.

W.E.E. Powell,  
Examination -  
continued.

Exhibit "A"

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Plaintiff's  
Evidence.

No. 5.

W.E.E. Powell,  
Examination -  
continued.

still have to take medicine for it. Sometimes I have a stinging sensation when I pass water.

At night I have to wear a rubber bag as I can't control flow of urine when asleep.

I can't do heavy work and have given up mason's work. But hope to recover sufficiently to resume it.

I was not able to work at all until 1st November when I took a job at the Post Office sorting and delivering mail at £45 and something a month for three months. 10

Then I got a job as a mechanic in a garage for about 4 mos. at £7 a week. I gave this up as the work was too heavy for me. I can't do too much stooping and I am a postman again at £45 a month. I am at the bottom of the scale and if I stay on I will receive increments from time to time, but I want to go back as a mason as soon as my health permits.

My health and strength are slowly improving and I hope to make a complete recovery. 20

I was in hospital about two months and in a plaster cast for about six months.

I started work as a postman a little while after the cast was taken off.

I am pretty sure I started work as a temporary postman on the 1st November, not 1st December.

Cross-  
Examination.

CROSS-EXAMINED

I had been a mason's helper for several years before the accident. I left school at 17, but had worked at mason's work during holidays before that. Worked mostly with father and employed by him. 30

I was an experienced pillion rider.

Father had his licence suspended from 17th October, 1955, to 17th April, 1956. During that period I went to work by bus or van.

I was not a passenger on cycle at time of incident which led to his suspension.

Father also broke his wrist when riding a push bike while suspended from riding an autobike.

Wrist still giving trouble in April 1956, but he was able to ride autobike. Wrist had been in a cast but cast had been taken off about a month before my accident.

Not supposed to get to work by 7.0 a.m.

Bus went by South Road.

10 Can't say exactly when we left home. Father had to be at his work in Reid Street by 7.0 a.m. I wasn't going to catch the bus that left at 7.0 a.m. but the one that left later. Father was in no hurry that morning.

The bike is a large one. Pillion rider has foot rests.

I know Cedar Avenue very well.

After we passed the aux. cyclists, saw car come up to Stop sign and stop.

20 The autocyclists were riding abreast and we passed them about 30' before reaching corner of Laffan and Cedar Avenue.

The two cyclists were well on their left and after passing them father pulled in to his left.

May be we passed the autocyclists farther north.

When coming alongside of Mt. St. Agnes is slightly uphill. An easy curve to turn left into Angle Street.

30 I have a fairly good idea of speed. We were not going at a constant speed. We accelerated to pass the cyclists and then slowed down. We didn't go over 20 to overtake and pass the cyclists and after that slowed down a little.

Would be surprised if someone said we were going over 30 m.p.h.

We were about 10 ft. from the car when father tried to make this turn.

Father hit wall and marked it and fell off and the bike was damaged.

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Plaintiff's  
Evidence.

No. 5.

W.E.E. Powell,  
Cross-  
Examination -  
continued.

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Plaintiff's  
Evidence.

No. 5.

W.E.E. Powell,  
Cross-  
Examination -  
continued.

If car hadn't moved out we could have passed safely in front of it.

We were 25 - 30 ft. from the car when it started to move out.

I don't know what happened to the aux-bikes.

Father braked and then the bike jerked forward. I think that when he braked he declutched and then he lost control and put the clutch in again.

Throttle controlled by twisting right grip;  
clutch control by lever on left arm.

10

I was not holding on to father. My hands were resting on my knees.

When I was thrown forward I made an attempt to steady myself, but it happened too fast for me to catch hold of my father.

If father had been inside speed limit I don't think father could have avoided the accident.

Father about halfway across Angle Street when he first braked.

Doctor hasn't told me I shall recover to be able to do heavy work, but I hope I will, I am slowly but steadily improving.

20

Father and Phipps argued as to whose fault it was and each blamed the other.

I heard a West Indian woman come along and say it was father's fault and she would give evidence about it and father replied to her.

Heard woman say she thought father going too fast.

I don't know O'Brien, a tiler.

30

Re-Examination

RE-EXAMINED

The West Indian woman was on the bus which stopped near the scene of accident. She could have seen us coming but could not estimate the speed. There is a bus stop in front of St. Theresa's. I didn't notice anyone at the bus stop. When I saw the woman she was in the bus.

Entrance to Angle Street fairly wide.

We were about in the centre of the mouth of Angle Street when father started to turn.

I say cycle more than 12 ft. from the car when father started to turn.

Don't know if father's bike made any skid marks on the road.

10 Father hit wall at an angle. His front tyre grazed along the wall. I think father was scratched a little.

I don't know if the West Indian woman knew the Defendant.

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Plaintiff's  
Evidence.

No. 5.

W.E.E. Powell,  
Re-Examination  
- continued.

No. 6.

No. 6.

EVIDENCE OF D.S. ASHDOWN

D.S. Ashdown,  
Examination.

DAVID SPANTON ASHDOWN (Sworn):-

20 Registered Medical Practitioner. Treated Plaintiff. He was in a condition of spinal shock. Paralyzed from waist down. XRay revealed crushing injury to 12 Thoracic and 1 & 2 Lumbar Vertebrae. The initial shock abated but there was a residual anaesthesia of inner side of thighs and buttocks and he couldn't void his urine. This was due to injury to spinal cord. He had a cord bladder. Later his bladder became reflex but he couldn't control passing urine. Bladder muscle weak. Nerve paralysis of bladder system still exists and I expect it to be permanent, and will be a permanent disability and a possible danger to his health.

30 Vertebrae have healed but with deformity and this prevents him doing heavy manual work. This is also likely to be permanent and the sequel of the bone injury is probable arthritis with further probable disability. Doctors can't do anything more for him except to guard against subsequent results.

In the  
Supreme Court  
of Bermuda

He also has anaesthesia of buttocks and is a possible cause of further incidental injury. He will always have to wear a bag at night.

Judge's Notes.  
Plaintiff's  
Evidence.

Originally in a frame and then in a plaster cast; about two months each.

Unlikely he could work until 6 to 8 weeks after the cast taken off.

No. 6.

D.S. Ashdown,  
Examination -  
continued.

Postman's work suitable for him but he shouldn't lift heavy weights.

He would not be advised to revert to mason's work.

10

He had severe pains at first and early stages of his treatment were uncomfortable.

Injuries consistent with fall from cycle and landing on his bottom, and not necessarily a heavy fall.

Cross-  
Examination.

CROSS-EXAMINED

Saw Plaintiff last week. Previously saw him in April or May. No regeneration of nerves. General physical condition good.

20

Re-Examination.

RE-EXAMINED

No questions.

No. 7.

No. 7.

G.T.E. Powell,  
Examination.

EVIDENCE OF G.T.E. POWELL

GEORGE THOMAS EVERARD POWELL (Sworn)

Live Cox's Hill. Mason. Plaintiff's father. On 30th May, 1956, I was going to work at A. S. Cooper's Reid St. Going south along Cedar Avenue. Son a pillion rider. Autocycle "Sun" with pillion seat that can carry two. Riding autocycle for 4 years. Often carried Plaintiff on pillion.

30

Son a skilled mason's labourer. He had been working 2 - 2½ years.



On 30th May he was working for me at 6/- an hour, that is about £15 a week.

That day he was going to a job on Harrington Sound and was going to catch the 7.05 bus from the Post Office.

10 It was close on seven when we were coming along Cedar Ave. When I got opposite St. Agnes School I passed two boys on auxiliary cycles. I was behind them for a good while and when I got opposite the school I speeded up and passed them. As I got opposite Mount St. Agnes gate at corner of Cedar Avenue and Laffan Street I saw a car pull up at the Stop sign at the junction of Cedar Avenue and Angle Street.

I thought the car was going to wait for me to pass but the car paused a bit and then came out slowly into Cedar Avenue and turned right. I braked suddenly and turned left to avoid hitting the car.

20 As I turned I got off balance and went to catch myself.

When I braked and turned I took out my clutch and when I lost my balance I accidentally let the clutch in again and the bike shot ahead.

It all happened in a split second.

When I found I couldn't pass behind the car I tried to turn up Angle Street. Couldn't quite make the turn and brushed the wall with my front tyre. My son fell off before I struck the wall and I fell off later.

30 I don't know exactly why he came off, whether he tried to get off or whether he was jerked off.

He fell off on his back in the middle of the road where Angle St. joins Cedar Avenue.

He was at exactly the centre of the road. He was about 10 ft. from the Stop sign. He was trying to get up but he couldn't make it.

Car turned north by Roman Catholic Church and the driver got out of the car and said "You didn't hit me you hit the wall". Defendant was the driver.

40 I said to him "Why did you leave the stop sign. Didn't you see me coming?"

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Plaintiff's  
Evidence.

No. 7.

G.T.E. Powell,  
Examination -  
continued.

Exhibit "B".

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Plaintiff's  
Evidence.

No. 7.

G.T.E. Powell,  
Examination -  
continued.

Exhibit "B".

He said "You were speeding."

Defendant suggested taking the Plaintiff to hospital and we did so. Plaintiff seemed to be very much in pain.

Cycle made no skid marks on the road. Made a mark on the wall about 18 ft. east of the stop sign.

I say the Defendant should have waited at the stop sign until I was past. He should have seen me coming.

There was a bus some distance off coming out of town. Defendant may have been watching the bus. If Defendant had waited for me to pass perhaps he would then have had to wait for the bus.

10

After pausing at the Stop sign the Defendant came out into Cedar Avenue and kept going until he had crossed the road but he seemed to come out slowly. If he had come out quickly I could have passed behind him.

As he turned right when he came out I had to turn left to avoid him.

20

When he stopped at Stop sign I was about 30 ft. from him.

I was not more than 10 ft. from the car when I put my brakes on.

Car had moved about a  $\frac{1}{2}$  car length from the Stop sign when I braked and turned.

When I first saw him start to move I was too close to him to pass clear of him.

He should never have attempted to come out until after I had passed.

30

I put brakes on practically as soon as I saw him start to come out.

Car about 20 ft. from me when I noticed it was starting to move.

Autocycle more difficult to stop than a car and takes a longer distance to pull up. Quick turn and braking caused me to lose balance.

Not conscious of son falling on me when I braked. A lady in the bus put her head out and said "You were speeding".

I was not speeding. I was only doing about 15 m.p.h. before the car began to move. I had slowed down after overtaking the cyclists.

CROSS-EXAMINED

10 I was about in line with Mt. St. Agnes south gate when the car stopped at the sign, at the point marked A.

I was about 5 to 6 ft. from the left wall of Cedar Avenue.

I didn't crumple my front wheel. It got a little bent when I brushed the wall.

It made a tyre mark on the wall. I did not make a hole or dent in the wall.

I was not going too fast. He pulled out too soon.

20 I gave statement to police soon after accident and said I speeded up to go past the boys.

I remember telling the police I was doing 20 to pass some boys.

Riding cycle about 4 years from now. Usually take son to work in the morning unless he is going a different direction.

I was off riding for 6 months for speeding. I broke my wrist when riding a pedal cycle while suspended from riding autocycle.

30 My broken wrist had quite healed at the time of my son's accident.

When I braked I closed the throttle but not right down and took the clutch out.

Let clutch go and it engaged again and that put cycle ahead again.

When put brake on didn't lock back wheel. Putting on brake and making sudden turn put me off my balance.

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Plaintiff's  
Evidence.

No. 7.

G.T.E. Powell,  
Examination -  
continued.

Cross-  
Examination.

Exhibit "B"

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Plaintiff's  
Evidence.

No. 7.

G.T.E. Powell,  
Cross-  
Examination -  
continued.

I was taking my son to the 7.05 bus which goes down the Middle Road.

I don't know if he was very familiar with buses. I was not late for the bus.

At 15 m.p.h. I think I can stop the bike in 10 ft.

My bike didn't skid.

I wasn't out of control because I was going too fast.

The car didn't move to get out of my way.

10

After he fell I went on into Angle Street.

If Defendant had pulled out fast from the Stop sign I could have passed behind him.

Defendant turned gradually north.

Accident could have been avoided by the Defendant remaining at the Stop sign.

Cars don't stop at the Stop sign but at the edge of the sidewalk.

Exhibit "B"

(Witness puts B on plan where he overtook the cyclists and C where he was when the Defendant stopped at the Stop sign.)

20

I don't know O'Brien. Didn't see anyone at the bus stop by St. Theresa's.

The woman was in the bus. She wasn't at the bus stop.

I had been convicted of speeding 17th October, 1955, and had licence suspended 6 months.

Phipps also said I was speeding.

I say I was not speeding.

Re-Examination

RE-EXAMINED

30

I estimate witness-box to jury-box as distance in which I can stop autocycle at 15 m.p.h.

It would take a little further if there was a pillion rider.

Exhibit "B"

I might not have estimated correctly in marking positions on the plan.

I was about 20 ft. away when I realized the danger of collision and I am satisfied I could not avoid collision then.

I have travelled on the 7.05 bus. I don't know what bus my son intended to take.

I didn't see anyone at the bus stop by the Convent.

10 The bus that was coming on which the woman was going to Kindley and it stopped opposite the Church.

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Plaintiff's  
Evidence.

No. 7.

G.T.E. Powell,  
Re-Examination  
- continued.

CASE FOR THE PLAINTIFF

JUDGE'S NOTES.

DEFENDANT'S EVIDENCE

Judge's Notes.

Defendant's  
Evidence.

No. 8.

Mr. Pearman: Accepts doctor's bill at £55. Defendant's case that accident entirely due to Plaintiff's excessive speed, at least 30 m.p.h. The two auxiliary cycles passed in front of Defendant's car.

J.W. Phipps.  
Examination.

No. 8.

20

EVIDENCE OF J.W. PHIPPS

JOHN WESLEY PHIPPS (Sworn)

Defendant. Live Smith's Hill Pembroke East. Carpenter employed Burlands for about 4 years. Own Austin Somerset P 6150, now 5½ years old.

On morning 30th May, 1956, I was going west along Angle Street on the way to work. Due there at 7 a.m.

30 Reached Stop sign at Cedar Avenue at approx. 3 minutes to seven. Stopped at Stop sign and looked left and right. I noticed two autocyclists coming along Cedar Avenue from the north. Powell was

Exhibit "B"

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Defendant's  
Evidence.

No. 8.

J.W. Phipps,  
Examination -  
continued.

behind the cyclists. Both bikes were then approximately opposite the cedar gate at the north end of the convent property.

As I looked Powell passed the auxiliary bikes.

He appeared to be coming pretty fast.

I then pulled ahead in line with the west edge of the sidewalk in Cedar Avenue and I didn't notice anything coming out of town.

I now looked to the right and I noticed Powell coming pretty fast and he appeared to be coming directly at me and I then pulled out and crossed Cedar Avenue. 10

The auxiliary cycle crossed in front of me before I pulled out. There were two on one auxiliary bike.

It appeared that Powell was trying to make the bend to turn into Angle Street and it seemed that he had lost his balance and was coming towards me. He appeared to be out of control and I thought he might hit my car. 20

I don't know exactly what happened but I heard the sound of a crash behind the car. I had reached the other side of the street by the time I heard the crash.

I stopped and noticed a man by a post at the south corner of Laffan and Cedar Avenue.

I got out of the car and crossed Cedar Avenue and saw the Plaintiff lying beside the wall in the mouth of Angle St. and the father was getting up from astride the bike which had fallen with him about 3 ft. beyond the young man. 30

I asked the father what had happened and he said "Why didn't you stop at the stop sign?"

I told him I stopped at the Stop sign and I didn't see that I had any cause for him to get in this accident. I said "If you hadn't been going too fast probably you could have continued where you were going."

While I was talking to Powell I heard a woman in the bus say to Powell "You were in the wrong, why don't you shut up?" I can't remember the exact words she used. 40

I then noticed the boy was in pain so I took him to hospital and then returned to the police station and reported the accident.

I have been driving cars for about 10 years and at one time I owned an autobike.

Powell appeared to be coming at about at least 30 m.p.h.

It is possible Powell was confused when I drew up from the Stop sign to the edge of the sidewalk.

In the  
Supreme Court  
of Bermuda

Judge's Notes.  
Defendant's  
Evidence.

No. 8.

J.W. Phipps,  
Examination -  
continued.

10

CROSS-EXAMINED

I am a Bermudian. Done all my driving in Bermuda. I am not indifferent to autocyclists. Not to my knowledge that car drivers are often indifferent to cyclists.

Cross-  
Examination.

I am not careless about the truth.

I had three minutes to get to work. I did stop at the Stop sign. I did not pull out regardless.

20

At first I thought I could come out safely ahead of Powell. I stopped with front wheels approx in line with Stop sign.

I didn't see Powell coming before I stopped at the Stop sign.

Stop sign at first line of pedestrian crossing. I stopped there and saw Powell when I stopped.

It was when Powell overtook and passed the autocycle that I realized that he was coming fast.

I saw one auxiliary cycle with two men on it, they appeared to be travelling at about 25.

Powell reached me first.

30

It is true that I had got across Cedar Avenue by the time I heard the crash of Powell hitting the wall. That is true.

The auxiliary cycle passed clear ahead of me along Cedar Avenue.

I crossed in 2nd gear; the gear I usually start off in.

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Defendant's  
Evidence.

No. 8.

J.W. Phipps,  
Cross-  
Examination -  
continued.

Agree Powell hit wall a little over 20 ft. up  
Angle Street.

Powell was about 14 to 15 ft. from me and ap-  
peared likely to hit me so I moved out across Cedar  
Avenue to avoid him.

Auxiliary cycle passed safely in front of me  
while Powell appeared to be trying to turn into  
Angle Street.

I can't see why it should be my fault that he  
didn't go down.

10

When I thought Powell would hit me my car was  
stopped. It looked as if Powell was trying to get  
control of the bike. I saw I could start and get  
clear of Powell if he was 15 ft. from me coming at  
me at about 30.

I could get up to 10 m.p.h. in 30 ft. from  
standing start.

I didn't at the time, know the man I saw by  
the post. I next saw him about nine months later  
when Mr. Pearman called me and asked me about the  
accident and he asked me if I knew anyone who was  
standing there and Mr. Pearman asked me to locate  
him and I found him at the Church of God.

20

It took me a couple of days to find him and I  
told him Pearman wanted to see him. Don't know if  
O'Brien is a West Indian. My father was a West  
Indian.

I don't know the woman in the bus. Didn't try  
to find her.

I think the two on the auxiliary cycles were  
white boys. Not tried to find them. I don't know  
who they were.

30

Exhibit "C"

I didn't tell the plaintiff's attorneys that  
I knew the names of the two boys on auxiliary  
cycle who were witnesses of the accident but pre-  
ferred not to give them.

I have not seen this newspaper advertisement  
before.

I asked Powell what happened to him getting  
out of control of the bike and he said "Why the -  
didn't you stop at the Stop sign". I told him I  
had stopped at the sign.

40



I moved out from the Stop sign so that he wouldn't hit me.

I said "I didn't hit you, you hit the wall."

I said I was across the street when Powell hit the wall.

In the  
Supreme Court  
of Bermuda

Judge's Notes.  
Defendant's  
Evidence.

RE-EXAMINED

No questions.

No. 8.

J.W. Phipps,  
Cross-  
Examination -  
continued.

BY COURT

Re-Examination.

10 I was at the second stop in line with the sidewalk when I saw Powell within 15 ft. of me apparently going to run into me and I then shot across the road to avoid him.

By Court.

Exhibit "B"

At this time the auxiliary cycle was right behind Powell but further out in Cedar Avenue and the auxiliary cycle passed safely across in front of me, while Powell passed behind me and hit the wall.

No. 9.

No. 9.

EVIDENCE OF H.B. WINGOOD

H.B. Wingood,  
Examination.

HILTON BERKLEY WINGOOD (Sworn) :-

20 Police Constable. Bermuda Police. Investigated this accident on 30th May, 1956. It was reported to police station at approximately 7.30 a.m. Went to scene of accident on 31st May.

Found tyre mark on the south side of Angle Street on the wall 18 ft. in from the Stop sign. Couldn't see any skid marks on the road.

Exhibit "B"

30 Tread marks were visible on the wall. They were heavy marks. The blow had knocked some of the wash off the wall. It appeared to have been caused by a hard blow. From the shape of the marks it appeared as if the cycle had hit the wall head on.

In the  
Supreme Court  
of Bermuda

The cycle involved was brought to Police Head-  
quarters by P.C. Eastwood on the morning of the  
30th.

Judge's Notes.  
Defendant's  
Evidence.

The front wheel was badly buckled and a new  
wheel was needed. Some spokes were broken and the  
rim pushed back.

No. 9.

CROSS-EXAMINED

H.B. Wingood,  
Examination -  
continued.

Cycle 5589 ridden by Powell on morning of ac-  
cident. Powell agreed that it was his cycle.

Cross-  
Examination.

I identified the marks from Powell's statement. 10  
There were marks where other vehicles had hit the  
wall but these were the only tyre marks.

Tyre marks indicated a head on blow.

RE-EXAMINED

Re-Examination

Tread in three sections. All three sections  
marked on the wall, can't recollect that, but it  
looked like a head on blow.

No. 10.

No. 10.

S. O'Brien,  
Examination.

EVIDENCE OF S. O'BRIEN

SINCLAIR O'BRIEN (Sworn)

20

Exhibit "B"

Live at Church of God, Angle Street. Mason. At  
about 7.0 a.m. on 30th May, 1956, I was on the  
convent side of Cedar Avenue waiting for a bus to  
go to work. I was by the convent gate at the  
corner of Cedar Avenue and Laffan Street. I had a  
clear view down Cedar Avenue to my left and I could  
see into Angle Street. Saw a car come up to the  
Stop sign in Angle Street. Car stopped. Car driven  
by the Defendant. I knew him slightly. Saw two  
auxiliary cycles (Motoms) coming into town along  
Cedar Avenue and they were a little nearer than the  
gateway to Dellwood. Also saw Powell on an auto-  
cycle with his son on the pillion. As I watched  
Powell overtook the two Motoms, about halfway between

30

the entrance to Dellwood and the turning into Angle Street. Powell was coming at a good speed, at about 30 m.p.h.

I have had an autocyycle for some years and I am familiar with autocyycles and speeds.

10 After overtaking the two Motoms it appeared to me as if Powell didn't know what he was doing. I couldn't tell whether he was going to continue along Cedar Avenue or turn into Angle Street. He was close to the wall on the Dellwood side and was pointing at the sidewalk where Phipps' car was.

It appeared as if he was going at such a speed that he couldn't turn one way or the other and he ran into the wall. It appeared to me as if the son fell off as the cycle hit the wall.

It appeared as if when Powell got within about 30 ft. of the car he didn't know what to do and lost control.

20 When Powell got within about 30 ft. of Phipps Phipps went ahead a bit and Powell passed behind him and struck the wall. Phipps had moved about 3 to 4 ft. at the time Powell struck the wall.

The two Motoms went straight down the road and passed in front of Phipps' car.

Phipps then crossed the road and stopped and got out of his car.

When Powell hit the wall the two Motoms were not far behind him. They were going at about 20.

30 I don't think it was anything that Phipps did that caused Powell to hit the wall.

There was a woman standing on the other side of Laffan St. on the east side of Cedar Avenue. When the bus came she crossed Cedar Avenue to the bus and after she got in the bus she said to Powell that she saw the accident and would come up and tell what she saw and Powell told her "Shut up your mouth and mind your business."

I didn't hear her say anything about Powell speeding.

40 After passing the two Motoms they were further out in the street than Powell was.

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Defendant's  
Evidence.

No. 10.

S. O'Brien,  
Examination -  
continued.

In the  
Supreme Court  
of Bermuda

CROSS-EXAMINED

Teenage boys on the Motoms. Coloured boys.  
Don't know them. They didn't stop.

Judge's Notes.  
Defendant's  
Evidence.

I was still at convent corner when they picked up young Powell and put him in the car. I didn't go to help.

No. 10.

After he overtook the Motoms Powell didn't appear to know where he was going.

S. O'Brien,  
Cross-  
Examination.

Powell was abreast of the Motoms when they were about 60 ft. from the curve into Angle Street. 10

After passing Motoms Powell came in close to wall on his left. No need to do this as no traffic coming the other way. Don't know why he did this.

I don't agree Phipps caused him to swerve to the left.

At this time Phipps was stopped at the Stop sign and an old lady with cycle was stopped just behind Phipps car.

The two Motoms passed down Cedar Avenue quite clear. When they passed across Phipps he was still standing at the Stop sign. 20

After passing the Motoms Powell slowed down slightly, say to about 28.

He didn't appear to brake until about 2 ft. before he hit the wall.

I estimate he was doing about 25 or more when he hit the wall.

The Motoms had just passed when Phipps moved out a few feet. Powell was ahead of the Motoms. Phipps moved 3 to 4 ft. when Powell was heading for him. 30

Powell was about 10 ft. ahead of the Motoms.

I don't know why Powell cut in in front of the Motoms so quickly.

The old lady with the cycle moved ahead just before Phipps moved. I don't know where she went to.

I can't remember telling Phipps about the old lady.

I have not discussed this case with Phipps.

Not correct I was standing by St. Theresa's.

Powell appeared to hit the wall head on.

Powell wasn't wobbling. He took a straight course at the wall. He was holding the handles and letting her go.

I have seen Powell riding before.

10 Powell hit the wall about 20 ft. from the Stop sign, about 20 - 23 ft.

Didn't discuss distance with Phipps.

Phipps just short of the pedestrian crossing when Powell was coming at him and when Powell got within about 30 ft. of him Phipps jumped his car ahead a few feet.

I didn't see son fall off before Powell hit the wall. Saw cycle hit the wall and both fell off.

I heard the crash when the cycle hit the wall.

20 Phipps crossed Cedar Avenue after Powell hit the wall. I don't know why he did that.

I can't remember speaking to Phipps or his speaking to me at the scene of the accident.

Didn't see advert. in the newspaper asking anyone who had seen the accident to come forward.

Powell made no attempt to turn up Angle Street.

RE-EXAMINED

30 I think Powell miscalculated in swerving in front of the Motoms after overtaking them. I think he may have looked behind him and so lost control.

BY COURT

I can't remember Phipps' car crossing Cedar Avenue before Powell hit the wall. My impression is that Phipps jumped ahead only a few feet but I was watching Powell after Phipps jumped.

DEFENDANT'S CASE.

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Defendant's  
Evidence.

No. 10.

S. O'Brien,  
Cross-  
Examination -  
continued.

Re-Examination.

By Court

In the  
Supreme Court  
of Bermuda

No. 11.

EVIDENCE OF L.C. DEMPSTER

Judge's Notes.

Defendant's  
Additional  
Evidence.

LEONARD CHARLES DEMPSTER (Sworn) :-

Chief Official Examiner of Transport Control Board. 1928-39 I was with an army experimental station at Deep Cut, Hants. experimenting with motor vehicles of various types and makes.

No. 11.

L.C. Dempster,  
Examination.

While there took a four months Instructors Course at Military College of Science. I was artificer in R.A.I. passed course and became an instructor, teaching others to drive motor vehicles, including motor cycles. 10

Posted to Bermuda as R.A. artificer i/c of military equipment here and stayed here all the war.

In 1944-46 ran courses training motor drivers.

Took up present position in 1953.

Test vehicles and drivers of all types.

Riding pillion of autocycle without holding on:- In England in the army pillion riders were instructed to sit well forward putting weight on to driver's back, with the hands on the driver's hips. 20

No specific regulations either here or in England about holding on.

In my opinion a pillion rider not holding on does not have as good a chance of overcoming a hazard as one who is holding on.

I think a person who rides pillion without holding on is taking a risk, but in my experience a good many people do that here. 30

It is probably all right if all goes smoothly but if something happens the pillion rider hasn't the proper control.

If pillion rider had been holding on he probably would not have been jerked off when the bike started forward suddenly.

CROSS-EXAMINED

Board issues an official pamphlet on Rules of the Road and driving.

No regulation about pillion riding.

General pattern of pillion seats have no hand-grips but pillion seats are so constructed that one should grip with the thighs.

I have recently ridden pillion on my son's auto-bike. I remember that I held on.

10 Centre of gravity lower with hands on knees.

Footrests should be behind vertical line of body.

Majority of male pillion riders here do not hold on to the driver.

Pillion riders get hurt more often in England than the drivers. I don't know about Bermuda.

RE-EXAMINED

No questions.

No. 12.

20 EVIDENCE OF L.M. CLARKE

LEROY MAXWELL CLARKE (Sworn) :-

Police Sergeant. In Bermuda since 1950 and been in Traffic Section of Police, excepting for 6 months since.

At times I ride pillion on police motor bikes. They have no handgrips on the seats.

I know of only one make that has handgrips for the pillion.

30 Many male pillion riders sit astride without holding with hands. Usually with their hands resting on their knees.

In the  
Supreme Court  
of Bermuda

Judge's Notes

Defendant's  
Additional  
Evidence -  
continued.

No. 11.

L.C. Dempster,  
Cross-  
Examination.

Re-Examination

Judge's Notes

Plaintiff's  
Additional  
Evidence.

No. 12.

L.M. Clarke,  
Examination.

In the  
Supreme Court  
of Bermuda

On a dual seat the pillion rider is usually close to the driver, and with his knees close against the hips of the driver.

Judge's Notes.

Rider should keep his weight down.

Plaintiff's  
Additional  
Evidence -  
continued.

When riding pillion on 500 c.c. I put one or both hands on the driver in starting, after that I rest hands on knees or in front of me.

No. 12.

When driving with pillion rider I don't like pillion rider to hold on to me, as they try to help steering and interfere.

10

L.M. Clarke,  
Examination -  
continued.

An experienced pillion rider in my opinion does not need to hold on.

Cross-  
Examination

CROSS-EXAMINED

I would advise a beginner to hold on to the driver as by holding on he is more secure.

A good pillion rider wouldn't interfere with the driver.

If the pillion rider holds on he is less likely to fall off.

Re-Examination

RE-EXAMINED

20

A high proportion of pillion riders do not hold on.

Holding on in starting is a matter of balance rather than acceleration.

I think the pillion rider would try to grab the driver in an emergency.

No. 13.

No. 13.

R. Young,  
Examination.

EVIDENCE OF R. YOUNG

RODERICK YOUNG (Sworn):-

Motor cycle dealer for 9 years. Ridden motor cycle for 11 years in Bermuda and in England. Have ridden "Sun" motor cycle in Bermuda.

30

Heard Dempster's and Sgt. Clarke's evidence.



Hand grips are not usually fitted on auto-cycles.

Footrests usually behind the knee line, giving a leverage.

Putting hands on knees helps to stabilise the pillion rider. Not my practice to hold on to the driver. It gives a false sense of security to the pillion rider and the driver as one then relies more on force than on balance.

10 Very large percentage do not hold on. 9 out of 10 males don't hold on.

There should be no relation between pillion rider and driver, but between the pillion rider and the bike.

CROSS-EXAMINED

I would tell a beginner not to hold on if he were happy without doing so as he is not really more secure by holding on.

RE-EXAMINED

20 No questions.

No. 14.

JUDGMENT

The Plaintiff, who is an infant suing by his next friend, claims substantial special and general damages against the Defendant for injuries sustained in an accident which occurred at the junction of Angle Street and Cedar Avenue, a few minutes before seven a.m. on the 30th May, 1956.

30 The Plaintiff was riding as a pillion passenger on an autocycle driven by his father and they were coming into Hamilton along Cedar Avenue on their way to work. As they approached the junction of Angle Street and Cedar Avenue they overtook and passed two Motom cycles and as they were crossing the mouth of Angle Street the father suddenly brak-ed and swerved, threw the Plaintiff off and went on and hit the wall on the south side of Angle Street, eighteen feet east of the Stop sign.

In the  
Supreme Court  
of Bermuda

Judge's Notes.

Plaintiff's  
Additional  
Evidence -  
continued.

No. 13.

R. Young,  
Examination -  
continued.

Cross-  
Examination.

Re-Examination.

No. 14.

Judgment,  
9th October  
1957.

In the  
Supreme Court  
of Bermuda

No. 14.

Judgment,  
9th October,  
1957 -  
continued.

The Plaintiff fell heavily on to the road and injured his spine resulting in his being detained in hospital for about two months and being unable to work for about six; and he has sustained permanent injuries to his spine and bladder which will affect him for the rest of his life.

The Plaintiff and his father allege that this sudden swerve and the consequences of it were caused by the Defendant who, having stopped at the Stop sign at the junction of Angle Street and Cedar Avenue, suddenly came out into Cedar Avenue across their path. 10

The Defendant, in his pleadings, denied that he was negligent, and that he was the cause of the father and son coming to grief, and alleged that the cause was that the father was driving too fast and not keeping a proper look-out and not having proper control of the autocycle.

As is usual in a traffic case all the eye witnesses give accounts of the incident which conflict in many details, but it is clear, firstly, that the father and son saw the Defendant's car come up to the Stop sign and stop when they were some distance away, and secondly that the Defendant saw the Plaintiff and his father and the two Motom cyclists which they overtook coming along Cedar Avenue, when they were some considerable distance away. 20

As to the speed at which the autocycle was coming, I can readily believe that it was exceeding the fifteen mile speed limit at that point. On the other hand I am quite satisfied that it was not travelling at a dangerous speed otherwise it would have hit the wall with much greater force than it actually did; and it was certainly not coming at such a speed that it could not quite easily have taken the gentle right-hand curve in Cedar Avenue at that point. 30

The son describes the movements of the car as coming up to the Stop sign and stopping and then pulling ahead and then stalling with its back about in line with the sidewalk of Cedar Avenue. The father describes the car as coming up to the Stop sign and stopping and then moving out slowly into Cedar Avenue across his path. 40

The Defendant said that he came up to the Stop sign and stopped, then pulled ahead a short distance so as to get a clear view of the road to his left

and then when he saw the autocycle coming at him as if to run into him he accelerated, his car crossed Cedar Avenue and had reached the far side when he heard a crash of the autocycle hitting the wall.

In the  
Supreme Court  
of Bermuda

—  
No. 14.

Judgment,  
9th October  
1957 -  
continued.

10 Sinclair O'Brien, who was standing at the corner of Laffan Street and Cedar Avenue on the other side of the road from the scene of the accident, said he saw the car come up to the Stop sign and stop and then apparently jump ahead a little as if to get out of the way of the on-coming autocycle.

Curiously, the Defendant and O'Brien both say that the two Motoms, whom Powell had overtaken and passed before he reached the car passed safely in front of it. If that is so, I find it difficult to understand why Powell could not also pass in front of the car.

20 But I feel that the evidence of the Defendant that he had reached the other side of Cedar Avenue by the time he heard the crash of the autocycle against the wall corroborates the story of the father and the son that the car came out into Cedar Avenue and blocked their path as they approached it.

30 Therefore, as between the autocycle and the car I feel bound to hold that the cause of the accident was the Defendant, who had ample warning of the approach of the Plaintiff's autocycle, which had the right of way over him, pulling out and obstructing his passage when the autocycle was so close that it would be exceedingly dangerous for the autocycle to attempt to swerve and pass in front of him, and difficult to swerve to his left and turn up Angle Street, thereby passing behind him.

40 Mr. Pearman, for the Defendant, submitted that the fact that the autocycle was exceeding the speed limit was prima facie evidence of negligence. That is quite correct. But the Defendant said that he first noticed the autocycle when it was near the north gate of the Mount St. Agnes property, that is, over 100 yards away, and saw it overtake and pass the two Motoms. He therefore had ample opportunity of estimating the speed of the autocycle and deciding whether it was safe to attempt to cross in front of it.

As I have already observed, the autocycle, though probably exceeding the legal speed limit, was not travelling at any extraordinary speed which might have deceived the Defendant, or caught him

In the  
Supreme Court  
of Bermuda

No. 14.

Judgment,  
9th October  
1957 -  
continued.

unawares, and I do not believe that it was the speed of the autocycle which caused the accident.

But this does not quite end the matter, as the Plaintiff gave evidence that he was sitting on the pillion of his father's cycle with his feet on the footrest and his hands resting on his knees, and he described the manoeuvres of the autocycle as first of all feeling a jerk which threw him forward against his father's back (evidently caused by the sudden braking of the auto-cycle) and then the cycle appeared to jerk forward, throwing him backwards on to the road. The father explained that when he found the car blocking his path he braked and took out his clutch and tried to turn left to pass up Angle Street, but the sudden swerve caused him to lose control momentarily and let the clutch in again. Whereupon the bicycle shot ahead, threw off the son, and ran into the wall.

10

Mr. Pearman, for the Defendant, argued that if the son had been holding on to his father he probably would not have been thrown off and sustained the injuries which he did: and I am inclined to agree with this. The question is: Was the son acting negligently in riding pillion in the position in which he was? And if this is so, he would at least have contributed substantially to the severe injuries which he sustained.

20

I gave the parties leave to call expert evidence on this point. The Defendant called Mr. Dempster, an expert from the Transport Control Board, who, although he apparently seldom rides as a pillion passenger himself, has had many years experience of training drivers of motor vehicles of many kinds. His opinion was that it was unsafe for a pillion rider not to hold on to the driver in front of him. As against that the Plaintiff called Sergeant Clarke of the Police Traffic Section and Mr. Roderick Young, a motor-cycle dealer, both of whom, I understand, have considerable practical experience in riding pillion on motor and autocycles. They both expressed the opinion that under Bermuda conditions and the types of relatively low-powered vehicles in use here, once a pillion rider had had a certain amount of practice and has learnt to balance properly, it is better for the pillion rider to sit securely on the seat with his hands on his knees. By so doing, they say, he is less liable to hamper the driver's power of manoeuvre if any emergency arises. Though of course they admit that in any such emergency the

30

40

50

pillion rider is more likely to fall off backwards than if he were holding on to the driver. They also say that the vast majority of male pillion riders in Bermuda do not hold on to the driver.

In the  
Supreme Court  
of Bermuda

—————  
No. 14.

Judgment,  
9th October  
1957 -  
continued.

10 In this case the autocycle was travelling along a main road with only slight curves in it and with gentle gradients and a smooth surface, and there was little traffic and few people about in the street at the time. The Plaintiff was an experienced pillion rider and was sitting in his normal position. The speed of the cycle, although probably above the legal speed limit, was nothing out of the ordinary, and although one can never be quite sure that no emergencies will ever arise under such conditions, I find myself unable to say that the Plaintiff was riding carelessly and I must therefore hold the Defendant liable as the cause of the accident and responsible for the damage that resulted from it.

20 As to special damages, it is not disputed that the Plaintiff incurred substantial hospital and medical bills and was quite unable to work until the 1st November. It is also not disputed that the results of his injuries have incapacitated him from carrying on his former work as a skilled mason's labourer, at about £15 a week; and he has had to take up light work as a postman, losing thereby income of approximately £4 a week. The doctor's evidence makes it quite clear that the damage done to the Plaintiff's spine and bladder will affect him for the rest of his life. In addition to the loss of earning capacity the Plaintiff will suffer considerable inconvenience and discomfort and his activities will be restricted. For the first few weeks, or possibly a month, after the injury he also suffered considerable pain.

30

40 It is very difficult to turn these items of damage and discomfort into pounds, shillings and pence, but in the nett result I award £562. 14. 0 special damages and £6,000 general damages, and costs.

Sgd. A.C. SMITH

Assistant Justice.

9th October, 1957.

In the  
Supreme Court  
of Bermuda

No. 15.

REASONS FOR JUDGMENT

No. 15.

Reasons for  
Judgment,  
31st January  
1958.

Reasons for Judgment under Section 14 of the Appeals Act, 1911.

I have little to add to the Considered Judgment which appears in the record, but perhaps I might clarify a few points.

In my Judgment I stated that Cedar Avenue is a main road leading into Hamilton, that its surface is smooth, and that the speed limit at this material point is 15 m.p.h. 10

I had no specific evidence on these matters, but they are all such common knowledge to practically everyone in Bermuda that evidence about them was hardly necessary.

As to the damages awarded - the amount of special damage was admitted by the defence; it was the assessment of the general damages that caused me some difficulty and I finally made my assessment of £2000 as representing pain, suffering, discomfort and general disability plus risk of further illness and shortening of life consequent on the serious and permanent injury to the spine and bladder, and £4000 as representing loss of earning capacity of approximately £200 a year. 20

Finally, as to the demeanour of the witnesses. The demeanour of the Plaintiff himself was excellent and all the others on both sides were good. They all impressed me as honest witnesses who were trying to tell me what they saw and heard and did to the best of their ability and all of them were quite ready to admit facts which might appear to tell against them or the side that called them. 30

Sgd. A.C. Smith

Assistant Justice.

31st Jan. 1958.

No. 16.

NOTICE OF MOTION FOR CONDITIONAL LEAVE  
TO APPEAL TO HER MAJESTY IN COUNCIL

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In the  
Supreme Court  
of Bermuda

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No. 16.

Notice of Motion  
for Conditional  
Leave to Appeal  
to Her Majesty  
in Council,  
28th October  
1957.

10 TAKE NOTICE that the Court will be moved on Satur-  
day the 2nd day of November 1957 at 10.00 o'clock  
in the forenoon or so soon thereafter as Counsel  
can be heard by Counsel for the Defendant herein  
for an Order (1) granting conditional leave to  
appeal to Her Majesty in Council from the Judgment  
of the Court made in the above mentioned matter on  
the 9th day of October, 1957, whereby the Plaintiff  
was awarded £562.14. 0 special damages and £6,000  
general damages, and costs and (2) staying all the  
proceedings upon the aforesaid Judgment of the Court  
pending the hearing of the appeal therefrom.

20 AND FURTHER TAKE NOTICE that the grounds upon  
which the appeal will be made are that (1) the deci-  
sion of the Court is wrong in law, (2) that the afore-  
said decision is against the weight of evidence, (3)  
that the damage sustained by the Plaintiff is too  
remote for recovery from the Defendant, (4) that the  
general damages awarded by the said decision are ex-  
cessive, and (5) that the question involved in the  
matter in respect of which leave is hereby sought is  
substantially in excess of £500. 0. 0., to wit  
£6,562.14. 0.

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 No. 17.

ORDER GRANTING CONDITIONAL LEAVE TO  
APPEAL TO HER MAJESTY IN COUNCIL

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No. 17.

Order granting  
Conditional  
Leave to Appeal  
to Her Majesty  
in Council.

30

[ NOT PRINTED ]

In the  
Supreme Court  
of Bermuda

No. 18.

REGISTRAR'S ORDER GRANTING CONDITIONAL LEAVE  
TO APPEAL TO HER MAJESTY IN COUNCIL.

No. 18.

Registrar's  
Order granting  
Conditional  
Leave to Appeal  
to Her Majesty  
in Council,  
2nd November  
1957.

Upon hearing Counsel for the Plaintiff and the De-  
fendant conditional leave to appeal to Her Majesty  
in-Council is granted upon the following conditions:

- (1) Appellant to give security for £500 for Respondent's costs of appeal within one month either by deposit in Court of £500 or by Bond with one sufficient surety for £500 name of surety to be submitted to Respondent and if not agreed sufficiency of surety to be decided by Registrar.
- (2) Appellant to have record prepared and dispatched within three months.
- (3) Stay of execution pending appeal.
- (4) Costs in cause.

10

W.T. ANGELO-THOMSON  
Registrar.

No. 19.

No. 19.

20

Notice of Motion  
for Final Leave  
to Appeal to Her  
Majesty in  
Council,  
23rd January  
1958.

NOTICE OF MOTION FOR FINAL LEAVE TO  
APPEAL TO HER MAJESTY IN COUNCIL

TAKE NOTICE that the Court will be moved by Counsel on behalf of the above named Defendant on Monday the 27th day of January 1958 at 11.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard for an Order granting to the Defendant final leave to appeal to Her Majesty in Council against the judgment of the Court made in the above entitled cause on the 9th day of October, 1957.

30

Dated the 23rd day of January, 1958.



No. 20.

ORDER GRANTING FINAL LEAVE TO APPEAL  
TO HER MAJESTY IN COUNCIL

In the  
Supreme Court  
of Bermuda

No. 20.

Order granting  
Final Leave to  
Appeal to Her  
Majesty in  
Council.

[NOT PRINTED]

No. 21.

REGISTRAR'S ORDER GRANTING FINAL LEAVE  
TO APPEAL TO HER MAJESTY IN COUNCIL

No. 21.

Registrar's  
Order granting  
Final Leave to  
Appeal to Her  
Majesty in  
Council,  
27th January  
1958.

10 UPON hearing and reading the affidavit of Counsel  
for the Defendant and hearing the Counsel for the  
Plaintiff it is Ordered that Final leave to Appeal  
to Her Majesty in Council be granted; costs to be  
in the cause.

W.T. ANGELO-THOMSON

REGISTRAR.

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Exhibits

"A"

Hospital Bill,  
26th January,  
1957.

E X H I B I T S"A" - HOSPITAL BILL

Terms Cash Paget East, Bermuda.

Jan. 26th 1957.

No. 58183

Mr. George Powell,  
Cox's Hill, Pembroke West.

To

THE KING EDWARD VII MEMORIAL HOSPITAL, Dr.  
a/c of Winston Everard Powell.

To Hospital Fees for Treatment		10
in I Ward from June 1 1956		
to June 30 1956 at 24/- a day and	34.16. 0	
from June 30 1956 to July 23		
1956 at 32/6 a day	37. 7. 6	
Out Patients' Dept Jacket case	8. 0. 0	
Sales (8) RX's	8. 0. 0	
Sales distry (36)	14. 8. 0	
X-Ray's Examn. and/or Treatment	8. 7. 8	
Laboratory Examination's (17)	6.15. 0	
	<u>117.14. 2</u>	
Paid on A/c	<u>1.13. 9</u>	20
Total	<u>£116. 0. 5</u>	

"B"

Plan of Locus.

"B" - PLAN OF LOCUS

/PRINTED SEPARATELY/

"C" - LETTER, from Plaintiff's Attorney  
to Defendant's Attorney.

Exhibits

"C"

GRAY & SMITH  
Barristers &  
Attorneys

P.O. Box 202

Hamilton Bermuda.

10th September, 1956

Letter from  
Plaintiff's  
Attorney to  
Defendant's  
Attorney,  
10th September  
1956.

Re: W.E. Powell v. J.W. Phipps

Dear Sirs:

10 In reply to your letter of the 28th ultimo  
relative to this claim for personal injuries  
(Bermuda Fire and Marine Insurance Company, Ltd. in-  
surer) we think you are in error in describing Mr.  
Phipps as deceased as we had an interview with him  
early last month when he informed us of the name  
of his insurers.

20 Mr. Phipps was requested by us to supply the  
names of two school boys who witnessed the "accident"  
but he stated that although he knew their names he  
would prefer to disclose them to the insurer's at-  
torneys. We would appreciate your inquiry and the  
particulars of their names. You of course may pre-  
fer to interview these witnesses in which case per-  
haps you would be good enough to inform us whether  
in the event of suit they will be called by you.

We enclose copy of a letter from Dr. Ashdown  
which shortly states the nature of the injuries sus-  
tained by our client, which you will note are of a  
very serious nature.

30 Mr. Phipps called on us in reply to a letter  
addressed to him at Smiths Hill, Pembroke East, but  
we understand that he lives on Angle Street in  
Hamilton. We would appreciate your reviewing this  
matter and an early reply.

Yours faithfully,

GRAY & SMITH.

Messrs. Conyers, Dill & Pearman,  
Barristers-at-Law,  
Hamilton.

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE SUPREME COURT OF BERMUDA

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B E T W E E N

JOHN WESLEY PHIPPS (Defendant)  
Appellant

- and -

WINSTON EVERARD EUGENE POWELL,  
an infant, by George Thomas  
Everard Powell his next friend  
(Plaintiff) Respondent

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RECORD OF PROCEEDINGS

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THEODORE GODDARD & CO.,  
5, New Court,  
Lincoln's Inn,  
London, W.C.2.  
Solicitors for the Appellant.

WOODCOCK RYLAND & CO.,  
15, Bloomsbury Square,  
London, W.C.1.  
Solicitors for the Respondent.