[COURT OF APPEAL]

*CHAUDHRY v. PRABHAKAR AND ANOTHER

1988 April 27, 29; May 20

May, Stocker and Stuart-Smith L.JJ.

Agency—Gratuitous agent—Purchase of second-hand car—Friend undertaking to find car for principal to buy—Friend stating car had not been in accident—Principal relying on agent's advice buying car—Car unroadworthy as result of previous accident—Whether friend in breach of duty owed to principal—Standard of care—Whether owing principal duty of care not to make negligent mis-statements

The plaintiff, a woman aged 26 who had just passed her driving test but who knew little about cars, asked the first defendant, a close friend, to find a suitable second-hand car for her to buy, stipulating that it should not have been involved in an accident. He agreed to do so for no payment. He was not a mechanic but had had a lot to do with motor cars and was regarded by the plaintiff as knowing much more about them than she did. He found a car which the second defendant, a car sprayer and panel beater whom he had not previously met, had for sale. The first defendant realised that the bonnet had been crumpled and straightened or replaced, but he nevertheless did not ask the second defendant if it had been in an accident and told the plaintiff that it was in very good condition and that he highly recommended it; he told her that the second defendant was a friend and when she asked if the car had been in an accident he said that it had not and that she need not have it examined by a mechanic. Relying on those assurances the plaintiff bought the car. It was subsequently discovered that the car had been involved in an accident and was unroadworthy and worthless; repairs had been carried out by the second defendant in such a way as to conceal and disguise the true state of affairs. On the plaintiff's action for damages the deputy judge gave judgment for her against the second defendant on the basis that he had been in breach of the implied term that the car was of merchantable quality, and against the first defendant on the footing that he had owed the plaintiff a duty of care at least to inquire if the car had been in an accident and that he had been in breach of that duty.

On appeal by the first defendant, conceding that he had owed the plaintiff a duty of care as her gratuitous agent:—

Held, (1) (*per* Stocker and Stuart-Smith L.JJ.), that a gratuitous agent owed his principal a duty to take that care which might reasonably be expected of him in all the circumstances, judged objectively; that relevant circumstances included the actual degree of skill and experience which the agent possessed, or that which he had held himself out as possessing, and the existence of friendship between the principal and the agent, although the latter was relevant only to the standard of care and not to the existence of the duty; and that, further, the fact of agency, albeit gratuitous, was powerful evidence of the existence of a business connection between the principal and the agent which, even if they were friends, gave rise to a duty of care in respect of statements made by the agent to the principal with regard to the subject matter of the agency where the agent knew the principal to be relying on his skill and judgment, the standard of care being the same as that required of a gratuitous agent (post, pp. 33G—34C, E–F, 35C, E–F, 37H).

Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd. [1964] A.C. 465, H.L.(E.) and dictum of Ormerod L.J. in *Houghland v. R.R. Low (Luxury Coaches) Ltd.* [1962] 1 Q.B. 694, 698, C.A. applied.

(2) Dismissing the appeal, that the first defendant had been in breach of the duty which he had conceded that he had owed to the plaintiff, which concession (*per* Stocker and Stuart-Smith L.JJ.) had been rightly made; and that accordingly, the deputy judge had rightly held him liable to the plaintiff (post, pp. 35D, D–E, H—36A, D–F, G, 37A–C, E–H, H—38A, 39A–B).

Per May L.J. It is doubtful whether the concession of the existence of the duty of care was rightly made in law. To apply the principle, that a duty of care arises where a party is asked to give gratuitous advice on a matter within his skill and knowledge and knows or ought to know that the person asking for the advice would rely and act on it, to the instant and similar cases will make social relations and responsibilities between friends unnecessarily hazardous (post, pp. 38F—39A).

Decision of Mr. J. P. Gorman Q.C., sitting as a deputy judge of the Queen's Bench Division, affirmed.

The following cases are referred to in the judgments:

Anns v. Merton London Borough Council [1978] A.C. 728; [1977] 2 W.L.R. 1024; [1977] 2 All E.R. 492, H.L.(E.)

Donoghue v. Stevenson [1932] A.C. 562, H.L.(Sc.)

Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd. [1964] A.C. 465; [1963] 3 W.L.R. 101; [1963] 2 All E.R. 575, H.L.(E.)

Houghland v. R. R. Low (Luxury Coaches) Ltd. [1962] 1 Q.B. 694; [1962] 2 W.L.R. 1015; [1962] 2 All E.R. 159, C.A.

Yuen Kun Yeu v. Attorney-General of Hong Kong [1988] A.C. 175; [1987] 3 W.L.R. 776; [1987] 2 All E.R. 705, P.C.

The following additional cases were cited in argument:

Avery v. Salie (1972) 25 D.L.R. (3d.) 495

Beal v. South Devon Railway (1864) 3 H. & C. 337

Greater Nottingham Co-operative Society Ltd. v. Cementation Piling and Foundations Ltd. [1988] 3 W.L.R. 396; [1988] 2 All E.R. 971, C.A.

Moffat v. Bateman (1869) L.R. 3 P.C. 115, P.C.

Shiells v. Blackburne (1789) 1 Hy.Bl. 158

Thompson v. Nanaimo Realty Co. Ltd. (1974) 44 D.L.R. (3d.) 254

APPEALS from Mr. J. P. Gorman Q.C. sitting as a deputy judge of the Queen's Bench Division and from Roch J.

By a writ endorsed with statement of claim dated 22 April 1985 the plaintiff, Nazma Chaudhry, claimed damages against (i) the first defendant, Kamal Kumar Prabhakar, for breaches of the fiduciary duty and/or the duty care owed by him to her as her gratuitous agent in and about his purchase on her behalf of a motor car from the second defendant, Bhupinder Singh Jandoo (trading as Jandoo Autocrafts), and (ii) the second defendant for breaches of the conditions as to merchantability and fitness for purpose implied by section 14 of the Sale of Goods Act 1979 into the contract for the purchase by the first defendant (as agent for the plaintiff) from the second defendant of a motor car which had subsequently been discovered to be in a dangerous and unroadworthy condition at the time of sale.

On 2 April 1987 Mr. J. P. Gorman Q.C., sitting as a deputy judge of the Queen's Bench Division, gave judgment in the action for the

A plaintiff against the defendants for £12,496·78 damages and interest, apportioned as to the first defendant in the sum of £5,726·58 and as to the second defendant in the sum of £6,570·20.

By a notice of appeal dated 22 July 1987, the first defendant appealed on the grounds that the judge (1) had erred in law and on the facts in that, having accepted and found that a gratuitous agent owed no higher duty to his principal than that which he would exercise in the B conduct of his own affairs, he had failed properly to compare the facts as found by him regarding the first defendant with that principle of law: he ought to have held that the first defendant had exercised the same care for the plaintiff as he would have done for himself and had thus discharged his duty; (2) had erred in law in holding that there had been any breach of the first defendant's duty: having found as a fact that the C repairs to the car which had rendered it dangerous and unroadworthy had been such as could only have been properly noticed and understood by an experienced bodywork repairer or panel beater, the judge ought to have held that the first defendant in all the circumstances had discharged his duty to the plaintiff by relying on the second defendant and by taking the car to the plaintiff and her family to be viewed by them; (3) having held that on the evidence before him he preferred that D of the first defendant to that of the second defendant, had been wrong then to have found that the first defendant had been in breach of his duty to the plaintiff in not asking sufficient questions of the second defendant as to whether the motor car had been involved in an accident: he ought to have found that a result of the second defendant's suppression of the true state of the vehicle no question posed by the first E defendant would have received a truthful answer as to accident damage or otherwise and that consequently the effect of not asking further questions should have been disregarded; (4) had erred in law in holding that he was not concerned to make a finding as to the first defendant's involvement in selling cars: he ought to have found as a fact that the first defendant was not in the business of selling cars and consequently ought to have held that the first defendant had owed no duty to the F plaintiff higher than that owed by any other gratuitous agent unconnected with the business of specialised repair and rebuilding of motor cars.

On 17 September 1987 Roch J. dismissed the first defendant's application for a stay of execution of the judgment as against him, but gave him leave to appeal against that dismissal and a stay of execution pending the hearing of that appeal. By a notice dated 25 September G 1987 the first defendant appealed against the dismissal of his application for a stay of execution.

Both appeals were heard together. The facts are stated in the judgment of Stuart-Smith L.J.

Mark Hoyle for the first defendant.

Timothy Scott for the plaintiff.

H The second defendant did not appear and was not represented.

Cur. adv. vult.

20 May. The following judgments were handed down.

STUART-SMITH L.J. This is an appeal from the judgment of Mr. J. P. Gorman Q.C., sitting as a deputy judge of the Queen's Bench Division,

in which he held the first defendant liable for the sum of £5,526.58. He held the second defendant also liable in a somewhat larger sum. Both defendants appealed against the judgment; but the appeal of the second defendant was abandoned shortly before the hearing.

The case concerns a Volkswagon Golf motor car sold by the second defendant to the plaintiff, the first defendant acting as an unpaid agent for the plaintiff. The sale price was £4,500. Unfortunately the car turned out to be unroadworthy and quite valueless.

The circumstances in which the sale arose were these. The plaintiff is a young woman of 26. She is an accountant; she knew nothing about the mechanical side of motor cars; but she had recently passed her driving test and was minded to buy a second-hand car.

The first defendant was a close friend; he was not a mechanic, but worked in a grocer's shop. Nevertheless he had quite a bit to do with motor cars. He had helped a cousin of the plaintiff to buy a car; he had not infrequently bought and sold cars for himself, seemingly making a profit on the transactions. The plaintiff clearly regarded him as someone who knew a good deal more about motor cars than she did. She asked him if he could see if he could find her a suitable car and she stipulated that such car should not have been involved in an accident. He agreed to do so. He was not to be paid and he acted solely out of friendship.

Shortly after this the first defendant came across the car. He was talking to a friend in the presence of the second defendant who said that he had a Golf motor car for sale which was available outside. The first defendant went to look at it. It looked very attractive. It had what the first defendant described as a "lot of make-up" and he thought it would be a nice car for a lady to drive. He became aware that the second defendant was a car sprayer and panel beater and that the bonnet of the car had been crumpled and either straightened or replaced.

With the consent of the second defendant he took the car round to the plaintiff. He told her that it was in very good condition; it was one year old and had 8,000 miles on the clock; and that he highly recommended it. He also said that the owner was a friend of his and had a garage and no way would he give him a car that was not a good one. This was not correct, since he had never met the second defendant before.

The plaintiff asked the first defendant if the car had been involved in an accident and he said no. He commended the car and assured her that she need not have it examined by a mechanic. As a result of these assurances the plaintiff did not have it examined by a mechanic; she decided to buy it. She paid £100 to the first defendant, which he handed to the second defendant. The balance of the price was paid by bankers' draft direct to the second defendant.

Although there was some superficial appraisal by the plaintiff's brother before the plaintiff decided to buy, the judge found that the plaintiff had relied upon the first defendant.

Over the next few weeks the car did not perform satisfactorily; but it was not until about two months after the sale that the major defects came to light. While the plaintiff's brother was driving the car it was involved in an accident. When the insurance company's engineer, a Mr. English, examined the car, he discovered that it had been involved in a previous accident. In his evidence he said that it had been involved in a very severe frontal impact such that the whole of the vehicle would need to be stripped out and the engine rebuilt. Some very bad attempt had

A been made to repair the vehicle, but it remained very severely damaged and unroadworthy. He likened it to a can of beans that had been cut open, it having in effect broken its back. Moreover, accessories had been fitted such as a battery, water bottles and cables, so that the repair was invisible unless the accessories were removed; and the underseal had been put over the chassis repair in an attempt to disguise it. The break or cut in the chassis was left open with ragged edges and the B repair had left it distorted and misaligned. It was not economical to repair it.

The car had indeed been involved in a serious previous accident and had been bought as salvage. The repairs had been carried out by or on behalf of the second defendant. His claim that he had done them properly was rejected by the judge, who held that the positioning of the C accessories and use of the underseal were intended to disguise and conceal the true state of affairs. The second defendant also alleged that he had told the first defendant that the car was a salvaged car which had been repaired. This was also rejected, and the judge held the second defendant liable on the basis that there was a breach of the implied term under section 14(2) of the Sale of Goods Act 1979 that the car was of merchantable quality.

D The judge held that the first defendant was in breach of his duty to take reasonable care. He regarded him as a person who was more skilled than someone with no knowledge of cars, though not putting him in the same position as a factor or seller. The gist of his finding is that, having been specially asked to find a car that had not been involved in an accident, the least he could do was to ask if it had been; that he had E been put on notice in respect of the crumpled bonnet which he should have followed up further; and that he was commending as attractive and accident free a car that was neither.

Mr. Hoyle on behalf of the appellant first defendant accepts that he was under a duty of care to the plaintiff, but he submitted that the judge had imposed too high a standard of care, and when the correct standard was applied the first defendant was not in breach. In the forefront of his F argument is the proposition that the first defendant was a gratuitous or unpaid agent and that the duty on such a person is to take such care towards his principal as he would in relation to his own affairs and to exhibit such skill as he actually possesses. He further submitted that this standard is an entirely subjective one. This appears to mean in the context of this case that if the first defendant would have bought the car G himself, as he said he would, and is an honest man as the judge found him to be, he cannot be held liable because he has acted up to the standard expected of an unpaid agent.

I cannot accept this; the degree of care and skill owed by a gratuitous agent is stated by *Bowstead on Agency*, 15th ed. (1985), art. 44(3), p. 152 to be

> H "such skill and care as persons ordinarily exercise in their own affairs or, where the agent has expressly or impliedly held himself out to his principal as possessing skill adequate to the performance of a particular undertaking, such skill and care as would normally be shown by one possessing that skill."

But I am quite satisfied that this is an objective standard and is not simply to be measured by the agent's honest statement that he would have similarly acted if he had been transacting the business on his own

account, however foolish that may be. For my part, I would prefer to state an agent's duty of care as that which may reasonably be expected of him in all the circumstances. This was the approach of the Court of Appeal in *Houghland v. R.R. Low (Luxury Coaches) Ltd.* [1962] 1 Q.B. 694 on the somewhat analogous case of a gratuitous bailee. Ormerod L.J. said, at p. 698:

> "For my part, I have always found some difficulty in understanding just what was 'gross negligence,' because it appears to me that the standard of care required in a case of bailment, or any other type of case, is the standard demanded by the circumstances of that particular case. It seems to me that to try and put a bailment, for instance, into a watertight compartment—such as gratuitous bailment on the one hand, and bailment for reward on the other—is to overlook the fact that there might well be an infinite variety of cases, which might come into one or the other category. The question that we have to consider in a case of this kind, if it is necessary to consider negligence, is whether in the circumstances of this particular case a sufficient standard of care has been observed by the defendants or their servants."

I have no doubt that one of the relevant circumstances is whether or not the agent is paid. If he is, the relationship is a contractual one and there may be express terms upon which the parties can rely. Moreover, if a paid agent exercised any trade, profession or calling, he is required to exercise the degree of skill and diligence reasonably to be expected of a person exercising such trade, profession or calling, irrespective of the degree of skill he may possess. Where the agent is unpaid, any duty of care arises in tort. Relevant circumstances would be the actual skill and experience that the agent had, though, if he has represented such skill and experience to be greater than it in fact is and the principal has relied on such representation, it seems to me to be reasonable to expect him to show that standard of skill and experience which he claims he possesses. Moreover, the fact that principal and agent are friends does not in my judgment affect the existence of the duty of care, though conceivably it may be a relevant circumstance in considering the degree or standard of care.

Mr. Scott on behalf of the plaintiff has submitted that the duty of care arises not only because of the relationship of principal and agent, but also under the doctrine enunciated in *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.* [1964] A.C. 465. The House of Lords held that a negligent, though honest, misrepresentation, spoken or written, may give rise to an action for damage for financial loss caused thereby, apart from any contract or fiduciary relationship, since the law will imply a duty of care when a party seeking information from a party possessed of special skill trusts him to exercise care, and that party knew, or ought to have known that reliance was being placed on his skill and judgment.

When considering the question of whether a duty of care arises, the relationship between the parties is material. If they are friends, the true view may be that the advice or representation is made upon a purely social occasion and the circumstances show that there has not been a voluntary assumption of responsibility.

Lord Reid in *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.* said, at pp. 482–483:

A "The law ought so far as possible to reflect the standards of the reasonable man, and that is what *Donoghue v. Stevenson* [1932] A.C. 562 sets out to do. The most obvious difference between negligent words and negligent acts is this. Quite careful people often express definite options on social or informal occasions even when they see that others are likely to be influenced by them; and they often do that without taking that care which they would take if B asked for their opinion professionally or in a business connection. The appellant agrees that there can be no duty of care on such occasions, and we were referred to American and South African authorities where that is recognised, although their law appears to have gone much further than ours has yet done."

C But where, as in this case, the relationship of principal and agent exists, such that a contract comes into existence between the principal and the third party, it seems to me that, at the very least, this relationship is powerful evidence that the occasion is not a purely social one, but, to use Lord Reid's expression, is in a business connection. Indeed the relationship between the parties is one that is equivalent to contract, to use the words of Lord Devlin, at p. 530, save only for the absence of D consideration.

It seems to me that all the necessary ingredients are here present. The plaintiff clearly relied upon the first defendant's skill and judgment, and, although it may not have been great, it was greater than hers and was quite sufficient for the purpose of asking the appropriate questions of the second defendant. The first defendant also knew that the plaintiff E was relying on him; indeed he told her that she did not need to have it inspected by a mechanic and she did not do so on the strength of his recommendation. It was clearly in a business connection, because he knew that she was there and then going to commit herself to buying the car for £4,500 through his agency.

If, as I think, the duty of care in this case can equally be said to arise under the *Hedley Byrne* principle, then logically the standard of care, or F the nature and extent of the duty, should be the same as that required of an unpaid agent. And this is an additional reason why I prefer to state the duty as I have, namely, to take such care as is reasonably to be expected of him in all the circumstances.

Was there a breach of this duty? Mr. Scott submits that this is a question of fact and one to be decided by the jury, had there been one, and that we should not interfere with the judge's decision. Where the G conclusion depends upon an issue of primary fact, this court will not normally interfere; the judge has seen and heard the witnesses and is in a far better position to decide such issue than this court. But where, as here, the conclusion that the appellant has been negligent depends upon inferences drawn from the primary facts, this court may well conclude that the judge has drawn the wrong inference or imposed too high a H standard. But for my part I wholly agree with the judge's conclusion. It seems to me that, whatever standard of care is required, the first defendant fell below it. The plaintiff had stipulated that the car had not been involved in an accident. The first defendant never asked the second defendant about this; and in answer to the plaintiff's question he assured her that it had not. When he was asked about this in evidence he said that, since he had no knowledge of the matter, he said "No;" and he went on to tell her that she need not have the car examined by a

mechanic. I do not think that this answer and advice can possibly be justified simply on the basis that the first defendant honestly thought that it had not been so involved because the car looked nice and well got up. When one adds to this the judge's finding that the first defendant was put on notice by the crumpled bonnet, the case against him was in my judgment a powerful one.

I must however deal with two arguments advanced by Mr. Hoyle. First, he submits that the question whether the car had been involved in an accident was far too vague. It might cover a scratch or a bump going in or out of the garage, or minor damage resulting from a slight collision which could easily be put right. I am not impressed with this argument. The plaintiff's stipulation must be given a reasonable interpretation. It is common knowledge that sometimes attempts are made to stitch together motor cars that have been involved in serious collisions affecting their roadworthiness; unless the repairs are done scrupulously, there is a serious risk that the value, performance or roadworthiness of the rehabilitated car will be affected. To my mind this is what the plaintiff's stipulation and inquiry was directed to and was so understood.

Secondly, Mr. Hoyle submitted that, if the first defendant had asked the second defendant the question whether the vehicle had been involved in an accident, he would have received a negative answer. In the light of the judge's findings that the second defendant's purpose in carrying out the repairs in the way he did was to conceal the true state of the vehicle, I am prepared to accept that as a matter of probability, though not certainty, this is so. If the first defendant had asked the question and reasonably believed the answer, then in my view he would have discharged his duty to the plaintiff. I emphasise the words "reasonably believed" because it seems to me that the first defendant showed a remarkable degree of naïveté when dealing with an unknown second-hand car dealer, whose trade was that of panel beater and paint sprayer. But I do not think it is helpful to speculate upon this question. The fact is that the first defendant did not ask the question and the judge has held, rightly in my judgment, that the plaintiff bought the car in reliance upon what the first defendant did and said.

I would dismiss the appeal.

STOCKER L.J. I adopt, with gratitude, the exposition of the facts given by Stuart-Smith L.J. in his judgment which I have read in draft and which, accordingly, I do not repeat.

This appeal does not raise any question as to whether or not any duty was owed at all, since it was conceded that the defendant was a gratuitous agent and owed the appropirate duty. On the facts of this particular case I agree that the concession was properly made, though the incidence of the duty may be a matter of dispute.

In many cases in which actionable negligence is claimed in respect of the voluntary giving of advice, the first question that arises is whether any duty of care is owed in respect of such advice where the relationship of the parties is such that no voluntary assumption of legal responsibility was intended or can properly be imputed and where the giving of the advice was motivated solely out of friendship. Thus, in my view, in the absence of other factors giving rise to such a duty, the giving of advice sought in the context of family, domestic or social relationships will not in itself give rise to any duty in respect of such advice. The existence of the duty would depend upon all the circumstances in which the advice

A was sought or tendered. This problem does not arise in this case because of the concession referred to that the duty of care did exist. Whether the duty arises out of a gratuitous agency or by reason of the extension of the *Donoghue v. Stevenson* [1932] A.C. 562 principle to economic loss sustained as a result of negligent advice as enunciated in *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.* [1964] A.C. 465, on the facts of this case, even if the existence of the duty had not been conceded, I B should, for my part, have felt bound to conclude that it did exist.

The first defendant accepted the task of finding a motor car suitable for the plaintiff in respect of which a specific characteristic was stipulated—viz. that it had not been involved in an accident. The first defendant purported to have done so and stated specifically in answer to the plaintiff's question that it had not been involved in any accident and C assured that there was no need to have it examined by a mechanic. He gave her information with regard to its provenance which was incorrect since he did not know the vendor before seeing the car. In making these assertions to the plaintiff he went beyond what was required of him in his capacity as a friend, and it seems to me he owed a duty of care to the plaintiff. The issue arising on this appeal, therefore, relates not to the existence of a duty of care but to its extent.

D Mr. Hoyle submits that the duty was that of a gratuitous agent which is stated in *Bowstead on Agency*, 15th ed., art. 44(3) to be: "Such skill and care as persons ordinarily exercise in their own affairs." I doubt whether this is an adequate formulation, at least in the circumstances of this case, when applied to advice given to another. However, even if it be the appropriate duty, the words "ordinarily exercise[d] in their own E affairs" seems to me to postulate an objective and not a subjective standard. If a subjective standard be correct, then in my view the duty so expressed becomes virtually meaningless and would cover circumstances in which no care at all had been taken. Objectively regarded, there was sufficient evidence before the judge from which he could properly conclude that the first defendant did not exercise such care, and the fact that he honestly asserted that he would have been happy to purchase F the car himself begs the question rather than resolving it. In my view, the fact that he did not ask the vendor specifically whether or not the car had been involved in any accident did not itself establish a breach provided that he had reasonable grounds for belief that it had not and if he had such reasonable grounds it would not necessarily follow that his assertion to this effect to the plaintiff amounted to actionable negligence. G This, however, is to consider this aspect of his advice to her in isolation. He did not, in fact, contrary to his assertion, know the vendor. He did not ask for, or examine, any registration documents, nor make any inquiries as to the previous owner of the car or its provenance. He bought it from a person whose trade was that of a panel beater and observed that the car had a crumpled bonnet. In my view, any purchaser of a car in these circumstances, however naïve, would be put on inquiry. H Thus, judged even by the standard of care for which Mr. Hoyle contends, if objectively considered, the first defendant failed to discharge it.

In my opinion, in the circumstances such as prevailed here, a more appropriate test is that suggested by Ormerod L.J. in *Houghland v. R.R. Low (Luxury Coaches) Ltd.* [1962] 1 Q.B. 694, 698: "whether in the circumstances of this particular case a sufficient standard of care has been observed" On either formulation of the duty, in my view, the first

defendant failed to discharge the duty and was accordingly liable for actionable negligence as the judge had found.

I have sympathy for the first defendant. He was, as the judge found, acting honestly and without any apparent motive to mislead the plaintiff. Common prudence would indicate that he should have explained the circumstances in which he obtained the car and not voluntarily have accepted a duty which otherwise might well not have been imposed upon him.

Accordingly, I agree that this appeal should be dismissed.

MAY L.J. I too have had the opportunity of reading the judgment of Stuart-Smith L.J. in draft and I adopt, with equal gratitude, his recital of the relevant facts of this case.

In developing his arguments in support of the appeal counsel for the first defendant began to lead the court into the field of gratuitous agents and the duty owed in law by such agents to their principals, referring us to authorities decided as long ago as 1789, 1864 and 1869. Counsel will I am sure forgive my comment that I found such an attempted exegesis somewhat unreal in 1988, when the relevant facts were in brief that a young woman of 26 asked a close friend of hers and her family, albeit one who knew something about motor cars, to look out for a suitable second-hand car for her to buy and on which to try out her newly qualified skills.

The real questions in this case, looked at with common sense and avoiding unnecessary legal jargon, were, first, did the friend seeking the car owe the intending purchaser any duty of care in and about his search; secondly, if he did, what was its nature and extent; thirdly, did he commit any breach of that duty causing the plaintiff any damage?

As Stuart-Smith and Stocker L.JJ. have recorded in their judgments, counsel for the first defendant conceded that his client owed the intending purchaser at least the duty to take such care in and about her business, namely, the search for a suitable car for her, as he would have about his own affairs had he been looking for a car for himself. In the light of the more cautious approach taken in recent cases by the House of Lords and the Privy Council to the question whether a duty of care exists, as expressed by Lord Wilberforce in the familiar passage from his speech in *Anns v. Merton London Borough Council* [1978] A.C. 728, 751–752—see, for instance, the opinion of the Privy Council in *Yuen Kun Yeu v. Attorney-General of Hong Kong* [1988] A.C. 175—I for my part respectfully doubt whether counsel's concession in the instant case was rightly made in law. I do not find the conclusion that one must impose upon a family friend looking out for a first car for a girl of 26 a *Donoghue v. Stevenson* duty of care in and about his quest, enforceable with all the formalities of the law of tort, entirely attractive.

Nor do I think, on the facts of this case, that but for the concession one can apply to the young man's answer to the girl's inquiry about the car's history

> "the principle that a duty of care arises where a party is asked for and gives gratuitous advice upon a matter within his particular skill or knowledge and knows or ought to have known that the person asking for the advice will rely upon it and act accordingly"

—see *Yuen Kun Yeu v. Attorney-General of Hong Kong* [1988] A.C. 175, 192, referring to the effect of *Hedley Byrne & Co. Ltd. v. Heller &*

A *Partners Ltd.* [1964] A.C. 465. To do so in this and similar cases will make social relations and responsibilities between friends unnecessarily hazardous.

However the concession was made, and I agree with Stuart-Smith and Stocker L.JJ. that we must accordingly decide this appeal on that basis. In those circumstances I think that one is driven to the conclusion that the findings by the deputy judge that the plaintiff did ask the first B defendant if the car had been involved in an accident, that he had answered that it had not without any direct inquiry to the vendor, whereas in truth it had been involved in a serious accident and been extensively but unskillfully repaired, inevitably led to the conclusion that the first defendant did breach his conceded duty of care and that the plaintiff suffered the damage alleged in consequence.

C I too would therefore dismiss this appeal.

Appeals dismissed with costs.
Plaintiff's costs against Legal Aid Fund nisi.
Legal aid taxation of first defendant's costs.
D *Leave to appeal refused.*
Continuation of stay of execution refused.

Solicitors: Khan & Co.; Benson Mazure & Co.

E [Reported by CLIVE SCOWEN ESQ., Barrister]

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