Present: Lascelles C.J. and Wood Renton J. 1912.

BOUSTEAD *v.* PERERA.

310—D. C. Kandy, 21,574.

Rule of the road—Parties meeting on the sudden.

Although the rule of the road is not to be adhered to, if by departing from it an injury can be avoided, yet in cases where parties meet on the sudden, and an injury results, the party on the wrong side should be held answerable, unless it appear clearly that the party on the right had ample means and opportunity to prevent it.

APPEAL from a judgment of the District Judge of Kandy (F. R. Dias, Esq.). The facts appear from the judgment.

Sandrasegara, for the appellant.

Hayley, for the respondent.

December 13, 1912. LASCELLES C.J.—

This is an appeal from a judgment of the District Court of Kandy awarding the plaintiff damages for injuries sustained by his motor cycle in a collision with the motor car of the defendant. We have only the version given by the plaintiff and that given by the defendant as to the exact circumstances in which the collision occurred. The accounts given by the plaintiff and the defendant as to a number of the incidents are the same. But there is a variation as to what happened at the precise moment of the collision.

The learned District Judge has accepted the account given by the plaintiff, and I see no reason for disagreeing with him in that respect. The evidence of the plaintiff is to the effect that he was riding a motor cycle up a steep hill in the neighbourhood of Gampola, and that as he was approaching a curve in the road where the accident occurred he was on his left hand side of the road, which, of course, was his proper side. He states that when first he saw the defendant's car it was about the middle of the road; that the defendant, thinking apparently that the plaintiff intended to pass him on his right of the road, steered to his, the defendant's, right, and came into collision with the plaintiff at the edge of the road on the left of the plaintiff. Now, on these facts, it has been suggested that the duty of the plaintiff was to have passed the car of the defendant on the plaintiff's right hand of the road. It is contended that the circumstances are such as to have justified the plaintiff in departing from the rule of the road and taking the wrong side of the

12—J. N. 35177 (1/34)

1912.

LASCELLES C.J.

Boustead v. Perera

road. I am of opinion that the plaintiff was right in observing the rule of the road, and that he would have taken on himself a very serious risk if he had attempted to pass the defendant on the wrong side of the road. There are no doubt cases where a passenger is justified in departing from the strict rule of the road. But in a case like this, where the vehicles met each other on a sudden turn on a road, the only safe course to take is for each of them to keep the side of the road which is prescribed by the rule. A good deal of stress has been laid on the fact that there was a heap of stones on the left of the hill going upwards near the place where the collision occurred. But there is no evidence, and I am not prepared to assume that this heap of stones projected so far into the road as to make it impossible for the defendant to leave room for the plaintiff to pass on the proper side. No blame, I think, attaches to either side as regards giving notice of their approach either by the horn in the case of the car, or the " cut out " in the case of the cycle, and there is no evidence that either side was going at an excessive speed. But I think the finding of the District Judge is clearly right, that the defendant committed an error of judgment in attempting to pass the plaintiff on the right hand side of the road.

With regard to damages, I see no reason to regard the award as otherwise a fair one. I think the appeal fails, and must be dismissed with costs.

WOOD RENTON J.—

I entirely agree, and wish to add a few words. The learned District Judge has, in my opinion, with equal clearness and correctness, both interpreted the evidence and stated the law applicable to it. He finds as facts that the curve of the road on which the plaintiff and the defendant met was not at all a sharp one, but was a fairly broad sweep to the right; that the defendant, who had naturally, and properly until danger arose, taken the centre of the road for the purpose of clearing the curve, had imagined that the plaintiff, who was coming up the curve on the left side, would, when he saw the position of the defendant's car, endeavour to pass it on the right, and that it was in consequence of that error of judgment on the defendant's part that the accident occurred. The law applicable to such a state of facts was explained as far back as 1828 in England in the case of *Chaplin v. Hawes*.[1] It was there held that, although the rule of the road is not to be adhered to if, by departing from it, an injury can be avoided, yet in cases where parties meet on the sudden, and an injury results, the party on the wrong side should be held answerable, unless it appear clearly that the party on the right had ample means and opportunity to prevent it. In applying that rule to the particular facts of the case, Chief

[1] *(1828) 3 Car. & Pay. 554.*

Justice Best made use of the following language:—"On a sudden a man may not be sufficiently self-possessed to know in what way to decide; and in such a case I think the wrongdoer is the party who is answerable for the mischief, though it might have been prevented by the other party's acting differently." It seems to me, in the present case, that the plaintiff had no reason to suppose that the defendant, at the time of their meeting, would not observe the rule of the road, and there is nothing to show that there was anything in the state of the road to prevent him from having done so.

Appeal dismissed.