

Clive Malcolm - - - - - *Appellant*

v.

Rex Knight and Another - - - - - *Respondents*

FROM

THE COURT OF APPEAL OF JAMAICA

ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL,
DELIVERED THE 7TH DECEMBER 1982

Present at the Hearing :

LORD FRASER OF TULLYBELTON
LORD SCARMAN
LORD BRIDGE OF HARWICH
LORD BRANDON OF OAKBROOK
LORD TEMPLEMAN

[*Delivered by* LORD FRASER OF TULLYBELTON]

Their Lordships consider that the judgment of the Court of Appeal in Jamaica in this case is entirely correct and find themselves unable to improve upon what was said by that Court. Their Lordships would just quote two passages from what the Court of Appeal said.

The first passage begins at the bottom of page 10 of the Record, where the Court of Appeal said this: "Accordingly to reinstate Mr. McLennon's evidence and consequently enter judgment for the plaintiff would involve not merely the drawing of inferences but the finding of such primary facts as ought properly to be left to the trial judge. At the same time we do not consider that a judgment in favour of the defendants ought to stand in circumstances where the learned trial judge, having accepted that Mr. McLennon witnessed the accident, went on to reject the vital part of his evidence for a reason which is wholly untenable".

Then in the very last paragraph of their judgment (page 12) the Court of Appeal said this: "We consider that in all the circumstances the credibility of these witnesses ought to be properly assessed by the tribunal with competence to do so and therefore the interest of justice requires that the appeal be allowed, the judgment of the court below be set aside and a new trial take place. For these reasons on February 14, 1980, we so ordered".

In those circumstances, their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the respondents' costs.

In the Privy Council

CLIVE MALCOLM

v.

REX KNIGHT AND ANOTHER

DELIVERED BY
LORD FRASER OF TULLYBELTON