IN THE SUPREME COURT OF THE
TERRITORY OF PAPUA AND NEW GUINEA.

STEVENS -v- WYLIE.

J U D G M E N T.

The Defendant, D.S. Wylie, is the Managing Director of the Sangara Rubber Plantation and was at the material time, on or about the 15th September, 1957, the Manager of the plantation operations. This plantation is about eight miles from Popondetta. The Plaintiff, L.W. Stevens, owns a property named Bubumbo, which adjoins the Sangara Rubber Plantation on one side.

On the night of 14th September, 1957 the Plaintiff entered the Sangara Rubber Plantation at a point close to his house which was quite near to the boundary of Sangara Rubber Plantation. The Plaintiff was driving his jeep and taking friends of his, who were employees of Sangara Rubber Plantation, to their homes on the plantation. The Plaintiff had earlier in the day driven these people to Popondetta to attend a function. On their return they stopped at the Plaintiff's house for a while. It was 2 a.m. on Sunday, 15th, when they entered the Defendant's plantation, and quite dark. The Plaintiff had been through this way to join the main Sangara Plantation road on two occasions before. The jeep had gone only a short distance from the boundary of the two properties when it went into a pit. It was travelling very slowly at the time. Certain damage was done to the person of the Plaintiff and to the jeep, which will be referred to later. The other occupants of the jeep, except for a shaking, do not appear to have received any injury. The jeep was extricated with the help of the Plaintiff's labour living in quarters not far from the boundary of the two properties. The jeep continued on in a damaged condition to deliver the passengers at their homes.

From the Sangara Plantation road there were wheel tracks leading to the point where the hole had been dug and beyond towards the boundary. Some were tractor tracks and some were of lighter vehicles. Although there was no defined road there had been a number of vehicles using the same route from the plantation road. Tractor tracks used by Sangara employees when gathering wood were among them.

The Plaintiff was friendly with the Sangara employees and as these employees were not allowed to use plantation vehicles for their private use, they depended on the Plaintiff to transport them whenever they wished to visit Popondetta or other places for amusement.

On the Saturday previous to the 14th, in the afternoon, the Plaintiff wished to visit his friends the Cichockis living along the Sangara Plantation road. This road joins the main Government road to Popondetta, quite close to the Defendant's house. He had never been refused entry upon this road before, but when he came to a point within 30 yards of Defendant's house, he came to a barricade barring further entrance. He asked Wylie, the Defendant, who was at his house entertaining visitors, to allow him to pass the barricade. It is said that there was a notice on this barricade reading - "No Admittance" or something like that, but the Plaintiff says he did not see any notice. It would appear from the evidence that the notice was there sometimes and sometimes it was not. It is not clear what the wording on the notice read. Wylie and Stevens had a conversation. The Plaintiff asked the Defendant to allow him to remove the barricade so that he could go through the plantation. Wylie refused to remove the barricade and the Plaintiff left. The Plaintiff knew that the barricade was placed in order to stop vehicles entering the plantation. Sangara is not fenced and entry by a vehicle can be made at most places from the main road.

On the day following the conversation with Defendant at the barricade, the Plaintiff passed through Sangara property at the point where the hole was afterwards dug. During the week following the Plaintiff had cleared a track on his property leading to the Sangara boundary at a point near to the place where the hole was subsequently dug. The Plaintiff said that this was done to make a wider pathway for his friends walking to his house. I do not think it matters why it was done.

On Saturday afternoon the 14th September the Defendant, Mrs. Wylie, Feeley and a native employee named Dusty, went in a plantation vehicle with picks and shovels to a point on the plantation road where there were wheel tracks going through the rubber and cocoa. They followed these tracks to a point near to the boundary of Sangara Plantation with the Plaintiff's property. At a place just clear of the rubber and cocoa trees, Feeley and Dusty were directed to dig a trench across the set of wheel tracks. This place was near to the Plaintiff's house and to the track which he had cleared on his own land. This trench, according to the Plaintiff, was 12 feet 6 inches long and 3 feet wide and roughly 3 feet deep. The witness, Feeley, gave the

dimensions of the trench as 12 feet long, 3 feet wide and between 2 feet 6 inches and 3 feet deep. Koppel says it was 6 feet to 8 feet long, 2 feet wide and 2 feet 3 inches deep. Cichocki gives it from memory about 10 feet long, about 3 feet deep and 3 feet wide. The Defendant said the ditch was 11 feet long, 3 feet wide, a foot deep at one end and 10 inches at the other.

The Defendant directed the digging of the ditch. He indicated how wide it was to be dug and how deep. He remained during the digging of the ditch. Feeley should know, as he dug the ditch, how deep and wide it was. The differences as to the dimensions given are not important because the Plaintiff's vehicle did go into it and it was of sufficient width and depth to cause considerable damage. The idea of the concealment of the ditch was the Defendant's. He said, "The purpose of covering it with leaves was so that the ditch would stop him from going into the plantation, because if the ditch was uncovered, he would see it and would go to the side of it, which he did when he got out of the ditch." He says he was walking away when the ditch was being covered. Feeley says the Defendant helped to cover the ditch. Anyway he did know the ditch was being covered and it was with his approval.

The purpose for which the trench was dug was to prevent, with certainty, the Plaintiff from traversing the plantation in his vehicle. It was so placed that there would be no avoiding it if unseen. Defendant says that he said to Feeley, "Take care that the ditch is such that no one will be injured. It is only there to let them know that we know they are using the track coming through our plantation." But as I said before, Defendant himself indicated the width and depth of the trench. Feeley denies that the Defendant told him he did not want the hole dug so that it would cause anybody any harm.

The idea of the trench was directed towards the Plaintiff. If the idea "was to let them know that we know they are using the track coming through our plantation," a far less injurious method could have been adopted "to let them know."

The scheme was directed towards the Plaintiff because since the barricade incident, the Defendant had been informed by his employees that Plaintiff had been using the track through the rubber "many times by day and night." This is in Mrs. Wylie's evidence. The Defendant was out to stop him effectively. It was particularly aimed at the Plaintiff because the Sangare Plantation was unfenced; there were no gutters and entry from the main road could have been at any point. The trench was dug

where entry would be from the Plaintiff's house.

It was said by the Defendant and his wife that trees had been damaged and rubber cups knocked off their sticks and crushed. They saw this on the Saturday afternoon on their way to the place where the hole was dug subsequently, so that this damage could not have been occasioned by the Plaintiff when driving through early on the Sunday morning. The evidence is that there were recent tracks made by a tractor and trailer, so it is not at all certain that the damage, whatever it amounted to, was caused by the Plaintiff. It is even more probable that any damage caused was by the tractor and trailer because of the trailer's greater width.

It is reasonable to inquire why the hole was dug on that Saturday afternoon. Feeley was ordered to get some natives and go with Wylie. Feeley could not find any boys. He got into the Land Rover with Wylie and went to the house where Wylie called his house boy, Dusty. Mr. and Mrs. Wylie, Feeley and the house boy went off in the Land Rover, having first collected picks and shovels at the garage. The Defendant knew that his employees and their wives had gone to Popondetta with Stevens in his jeep. He must have known this because they had to pass by his door to get to the main road where Stevens picked them up, which was not far from his house. They were all out of the way and it was a clandestine operation.

The question arises as to whether or not the Plaintiff was a trespasser. On the day of the barricade incident, the Plaintiff was told by Defendant that he could not allow him to enter the property. The Plaintiff admits that the Defendant did say words to the effect that he was not allowing anyone on the property because of damage to his vehicle. The Defendant would not allow him to pass the barricade and thus enter upon the Sangara road, a private thoroughfare, which went through the plantation. From that I do not know how the Plaintiff could conceive it that he was not prohibited from entering the property elsewhere. At the time when the Plaintiff and his guests were at his house on the Saturday night after their return from Popondetta and Cichocki asked him to drive them home, Cichocki knew that the barricade had been erected. Koppel knew that the Plaintiff had been stopped from entering the property. The request by Cichocki to drive them home, which might be considered to show that the Plaintiff was an invitee and not a trespasser, is without force because Cichocki was an employee without authority. In my view the Plaintiff was a trespasser at the relevant time.

Now the Plaintiff being a trespasser, what duty had the

Defendant towards him. An occupier owes no duty to a trespasser to see that his premises are safe and he is not in duty bound to warn trespassers of dangerous premises. But the occupier may not intentionally lay a trap for the trespasser. He is not entitled to create what are called retributive dangers, i.e., dangers created for the purpose of injuring trespassers which are not obvious but concealed, especially if hidden within the boundaries of his property (Salmond on Torts 10th Ed. p. 490). "When the trespasser is known to be on the land, the duty is to take reasonable care not to injure him, that is, there is the same duty to take care for the safety of the trespasser as for any other person known to be present, but no duty, in the absence of actual knowledge of his presence, to anticipate his presence. Even if the trespasser is not known to be on the land, there is a duty not to do an act with the intention of injuring him such as setting a trap for him." (Clerk & Lindsell on Torts 9th Ed. p. 544). Robert Addie & Sons (Collieries) Ltd. v. Dumbreck (1929) AC. 358; Bird v. Holbrook (1828) 4 Bing 628.

In Robert Addie & Sons at page 365 Lord Hailsham puts it as follows: "The trespasser comes on to the premises at his own risk. An occupier is in such a case liable only where the injury is due to some wilful act involving something more than the absence of reasonable care. There must be some act done with the deliberate intention of doing harm to the trespasser, or at least some act done with reckless disregard of the presence of the trespasser."

It is true that the owner is not in duty bound to anticipate the presence of the trespasser, but in this case he knew that the trespasser would in all probability come upon the land.

The Defendant claims that it was not his purpose that anyone should be injured. The rule is, however, that "a party must be considered, in point of law, to intend that which is the necessary or natural consequence of that which he does."

I find that the Defendant deliberately laid a trap for trespassers, having in mind particularly the Plaintiff. The Defendant and the Plaintiff had been friendly up to the time of the barricade incident. Mrs. Wylie told the Court that when the Plaintiff protested to the Defendant at not being allowed to pass the barricade, Defendant said, "I am sorry unfortunately I cannot allow it." This does not appear to me to be an unfriendly reply to the Plaintiff's request. It is difficult to understand why the Defendant did not warn the Plaintiff of the danger of entering the plantation. The Defendant could quite easily have

placed an effective warning at the boundary of his property or given a verbal warning to the Plaintiff or taken some other quite inocuous preventive measure. Mr. Kirke put this question to the Defendant, "Q: This was to your liking and you were laughing at the prospect of Stevens falling into the hole," to which the Defendant answered, "A: I don't know whether I did or not, it would be a surprise to him anyway." One can take it from that that it was never intended that there should be a warning.

In falling into the trench while driving his vehicle, the Plaintiff suffered injury to himself and damage to his vehicle. He claims both special and general damages amounting to the sum of £618.14.6.

As special damages he claims the sum of £2.2.0. medical fees, X-ray fees, 7/6d., Hotel expenses, Port Moresby, £4.5.0., air fare £12. The medical fees, Hotel expenses and air fare come to the sum of £18.14.6. There is no dispute about this sum, and that I allow.

The Plaintiff claims £300, the cost of a new jeep. The damaged jeep could have been repaired and all I will allow on this is the cost of the repairs. It was driven in continuance of the journey after the accident on the Sunday morning. It was driven for at least three months after the damage had been caused to it. The Plaintiff says he used it eight times after the accident. The damage actually done to the jeep was that the engine mounting bracket on the right hand side collapsed. Both rear spring hangers of the front spring were broken along the chassis. The right hand member of the chassis was buckled and broken. The bottom outlet of the radiator was smashed off. It amounted to complete damage to the chassis and the necessity to solder the radiator. The cost of a new chassis was stated to be £87.10.0. and freight. £15. would cover the freight. For this item I allow £100.

The Plaintiff claims general damages for pain and suffering, for being prevented from moving about his plantation and directing his labour and for the shock that he suffered. The injury to the Plaintiff's leg was little in itself, but whatever there was developed into a carbuncle, so he relates, which necessitated lancing, and it was a fortnight before he was well again. No doubt there was some pain and suffering. There is no evidence of shock. Perhaps the Plaintiff got a fright, but damages are not recoverable for mere fright alone.

In Paragraph 5(b) of the Statement of Claim it is claimed that as a result of the accident the Plaintiff was

prevented from moving about his plantation and directing his labour. What that disability represented in money or if anything was lost by it, I have not the slightest idea, for there is no evidence. All that the Plaintiff says in his evidence is this: "It was a fortnight before I was well. I took a drug for three days, had to remain quiet, and stayed in and around my house for a fortnight. I couldn't walk. I was hobbling about. I had had it lanced." In my view this matter comes within the conception of pain and suffering.

With regard to pain and suffering there is always a difficulty. "How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. In truth, I think it would be very arguable to say that a person would be entitled to no damages for such things. What manly mind cares about pain and suffering that is past? But nevertheless the law recognises that as a topic upon which damages may be given." (The Mediana 1900 A.C. p. 113 per Earl of Halsbury L.C. at p. 116).

I must then direct my mind as to what would be a reasonable sum to award under this heading. The pain and suffering in this case was not prolonged, the inconvenience was not substantial. The Plaintiff was well in a fortnight. I think the sum of £75 is a reasonable amount to award for pain and suffering and any inconvenience caused to the Plaintiff.

In the result, the Plaintiff is awarded the sum of £193.14.6. for damages.

Judgment for the Plaintiff for the sum of £193.14.6. with costs to be taxed and set off against the taxed costs awarded the Defendant with respect to the two several adjournments of the trial.

J.

24/9/59.