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*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: 20/03/2020

2018 No 14510

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

MONICA COOKE

Plaintiff;

and

DAMIEN CONVERY

First-named Defendant;

and

IAN DAVID HAMILTON

Second-named Defendant.

MAGUIRE J

**Introduction**

[1] This action was initiated by Monica Cooke, a woman now aged 76, who was seriously injured as a result of a road traffic accident which occurred at the Seacoast Road, County Londonderry, on the late afternoon of 22 December 2015. On that occasion the plaintiff had been visiting a friend in the village of Bellarena and had left to travel in a westerly direction along the Seacoast Road heading for Ballykelly. It was about 17.47 hours and the weather was dark and it was raining a little. The plaintiff told the court that to her right as she proceeded was a minor road called the Lomond Road. She noticed that headlights momentarily lit up the right hand side of her face. Immediately thereafter, she saw headlights coming towards her from the Limavady direction along Seacoast Road, that is travelling in an easterly direction. These were bright and she told the court that she thought to herself why didn't the driver dip them. However that may be, within a moment or two there was a loud bang and it is not in dispute that a Passat vehicle driven by the first-named defendant, Mr Convery, a taxi-driver who was alone in his car, struck the plaintiff's vehicle, causing to her serious personal injuries, loss and damage. It is also not in dispute that the plaintiff's vehicle at all material times had remained in the lane for traffic going westwards and that her lane in effect had been intruded into by Mr Convery's vehicle which ought to have been driving in the easterly lane along

the Seacoast Road. Mrs Cooke told the court that after the accident she remained in her car but a short time later a man she now knows to be the second-named defendant, a Mr Hamilton, came to help her and stayed with her until the emergency services arrived.

[2] In Mrs Cooke's evidence she said she believed that when her vehicle was struck it was pushed back by the vehicle which struck it. The point of impact it would appear was within the westerly lane more or less opposite the mouth of Lomond Road.

[3] It is plain, and again is not in dispute, that in these proceedings Mrs Cooke is bound to succeed. Helpfully, the parties have agreed the quantum in this case at £225,000. However, the real issue is not about a finding of liability in favour of the plaintiff but is in respect of the question of whom of the two defendants should be held liable or whether both should share in the liability for the accident.

[4] In respect of this matter there are strongly expressed differing views about the cause of the accident on the part of the first and second-named defendants.

[5] Before describing the evidence in a little more detail, it is helpful to encapsulate the central differences between the defendants before looking at each's account in more detail and assessing it.

### **The First-Named Defendant's Case**

[6] The first-named defendant, Mr Convery, was a taxi-driver and is adamant about how this accident occurred. As already made clear, he was travelling in an easterly direction along the Seacoast Road. As it was dark, he was using his headlights, he said, on dip. As he proceeded towards the junction of the Seacoast Road and the Lomond Road, the latter being only a minor road, he said what happened was as follows:

- Without warning, the second-named defendant, who was driving a white van, came out of the Lomond Road.
- He then turned left into the Seacoast Road with a view to travelling along it in an easterly direction.
- This manoeuvre was executed without the second-named defendant stopping notwithstanding that there clearly was a stop sign at the junction of Lomond Road where it met the Seacoast Road.
- At the time when the second-named defendant's vehicle came out of Lomond Road the first-named defendant's vehicle was just some 10 metres or so away.
- This created a crisis for the first-named defendant who, in the agony of the moment, swerved to his right to avoid colliding with the driver's side of the van.

- The action of swerving to his right was executed at a time when the first-named defendant maintains that he had not seen any oncoming traffic.
- In these circumstances the first-named defendant's vehicle, without prior indication of the presence of the plaintiff's vehicle, crossed over to the plaintiff's side of the road.
- There was then a collision between the Passat and the plaintiff's vehicle. As a result of the collision the Passat rebounded across the road in the direction of Lomond Road, ending up on the left-hand lane of the minor road as the observer looks at it from Seacoast Road, facing towards the Seacoast Road.

[7] Of particular note, the first-named defendant (for the first time during a police interview on 4 April 2016) maintained that just after the accident he saw the second-named defendant's vehicle (the white van) reversing along Seacoast Road into the right lane of Lomond Road (as the observer looking into Lomond Road would see it).

[8] This manoeuvre was, the first-named defendant thought, carried out so as to enable the second-named defendant to claim that he had not turned left into Seacoast Road but had remained behind the stop line at the junction between Lomond Road and Seacoast Road. In other words, the first-named defendant was of the view that the reversing he witnessed was an action on the second-named defendant's part designed to enable the second-named defendant to say later that in fact he did not go into Seacoast Road at all when in fact he had done so, in the way described above.

### **The Second-Named Defendant's Case**

[9] The second-named defendant, Mr Hamilton, provided an account which was expressed with equal vehemence to the way in which Mr Convery had expressed his account. He said he was an electronic engineer and that he had been travelling along the minor road heading for the Seacoast Road. He intended to go left onto the Seacoast Road. He was, at the time on his way to Coleraine (i.e. intending to go in an easterly direction) for the purpose of his vehicle undergoing at Coleraine an MOT examination. He said what happened was as follows:

- As he travelled along Lomond Road his headlights were on dip.
- He stopped at the stop sign at the junction of Lomond Road and the Seacoast Road.
- He did not cross the stop line.
- He saw the first-named defendant's car to his right on Seacoast Road.
- All of a sudden the first-named defendant's car swerved and travelled into the lane in which Mrs Cooke's car was travelling.
- He said that after the accident he left his vehicle where it was and after telephoning the police, went to see how Mrs Cooke was.
- He claims he co-operated with the police in its investigations.

[10] Interestingly, Mr Hamilton said that before he left the scene he walked along Seacoast Road from the point where the plaintiff's car had ended up in a westerly direction. About 30 yards from the junction between Seacoast Road and Lomond Road he said he found the road to be slippery and later in his evidence said that he saw marks on the road in the form of a diagonal skid moving from the lane the first-named defendant had been in across into the other carriageway. He also said that at the time he had heard hard skidding, a matter he said he focussed his mind on. In the second-named defendant's view, the skid marks belonged to the first-named defendant's vehicle. He said the above notwithstanding that there was no mention of Mr Convery's vehicle skidding during the interview Mr Hamilton had with police on 11 May 2016<sup>1</sup>, though there is reference to the surface of the road being slippery due to oil. Mr Hamilton told the court that on the night he had told a police officer what he had discovered but it is notable that there was no reference to this in the police report.

## **Other Salient Points**

### **The Plaintiff**

[11] The court has already summarised the plaintiff's account as given from the witness box. However it is clear that she made two statements as part of the police investigation into the accident.

[12] The first of these was made on 4 April 2016. In it she said she was driving at 45-50 mph. In particular, she then used these words:

"As I was driving along I saw car lights shining in my driver's window and then immediately I felt a big smash at the front of my vehicle".

[13] Later, the police returned to her on 5 May 2016. The reason for this was that the investigating officer wanted to clarify the direction the headlights that she had seen were coming from. To this query she replied:

"The headlights that I saw were shining into my driver's side window coming from the side window coming from the right-hand side ... Immediately after I saw the headlights coming from the taxi's headlights and the crash occurred".

[14] The words just quoted coincided with what she said in her evidence-in-chief, save that in her examination-in-chief she made the comment quoted earlier to the

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<sup>1</sup> The court notes that it does not have a transcript of this interview. What it has is a summary of the interview. In the case of Mr Hamilton, this should be borne in mind. Formal statements of evidence are available in the case of the plaintiff and Mr Convery.

effect that she thought to herself why hadn't the driver dipped his headlights. This appears to be a reference to Mr Convery.

[15] In cross-examination, the plaintiff gave the clear impression that the headlights which shone onto the right-hand side of her car came from the second-named defendant's vehicle which was on the Lomond Road as she passed it. This was just before the accident. After this she noticed the headlights coming towards her from the opposite direction along Seacoast Road (*i.e.* from the first-named defendant's car). She explicitly stated that she had passed Lomond Road before she saw Mr Convery's headlights and therefore before the accident.

### **Constable Durkan**

[16] Constable Durkan was the investigating officer in respect of the accident, though he was not the first police officer on the scene. Two others had arrived at the scene before him. He is the officer who drew the sketch map which was proved in evidence.

[17] The police sketch need not be described in detail but the court will record the following features of it:

- It depicts the Seacoast Road at or about the place of the accident. It was 23 feet 10 inches wide made up of two lanes divided by an intermittent white line.
- It showed the plaintiff's car well within the westerly lane sitting at an angle with its front facing diagonally towards the other side of the road.
- It had an X on it marking the place of impact. Notably this place of impact was not disputed by anyone. The plaintiff's car was, however, behind the place of impact, a situation which may have come about by reason of the first-named defendant's Passat car having collided with it and having pushed the plaintiff's vehicle back towards the direction in which it had been travelling.
- Interestingly, the X in the sketch seems to be in line with the junction at Lomond Road. Indeed in the middle of that road as you look at it from the Seacoast Road.
- On the left as you look at Lomond Road from the Seacoast Road was the first-named defendant's vehicle at the entrance side of the road. It occupied the lane that a car would use if it was driving left from the Seacoast Road into Lomond Road. The first-named defendant's car had its front facing directly onto Seacoast Road.
- The second-named defendant's vehicle is not on the sketch at all. Constable Durkan told the court that when he arrived at the scene he was told by another police officer at the scene that Mr Hamilton was simply there as a witness. It is to be supposed that at the time when the sketch was drawn Mr Hamilton had left the scene. Constable Durkan told the court that when he first arrived at the scene Mr Hamilton's vehicle was in Lomond Road

pointing towards Seacoast Road situated behind the stop line on the correct lane for a vehicle coming down Lomond Road to the junction.

[18] When Constable Durkan was asked about how he had discerned the point of impact shown on the sketch by an X, he told the court that there was some debris in that area. He has not, however, depicted the debris to which he was making reference in his sketch and the court can see that it might be said that the sketch lacks fine detail.

[19] The officer told the court when Mr Hamilton was leaving or just about to leave the scene Mr Convery protested to him about this. He said that Mr Convery said "Why are you letting him go. He caused the accident". Constable Durkan told Mr Convery that he had Mr Hamilton's details. Later, he said, he contacted Mr Hamilton and asked him to return, which he did. When he did, the officer said he told him of Mr Convery's allegation and breathalysed him with a negative result. At this stage he seized Mr Hamilton's phone. This was provided, though Mr Hamilton pointed out that it contained sensitive information both of a national security and private nature. Specifically he referred to information about a mixed religious relationship he was in with a female in Belfast.

[20] The object of seizing Mr Hamilton's phone was to check it for calls made in or around the time of the accident. This process took a lengthy period, which understandably irritated Mr Hamilton.

[21] However, the phone analysis did reveal that Mr Hamilton had made a call at 17.43.27 that early evening. Its duration was to 17.45.27. The phone was next used for a 999 call to the police at 17.47.42, just over 2 minutes after the earlier call ended.

[22] The officer referred to Mr Hamilton at the scene as being calm and co-operative though he thought that the concerns he had expressed in relation to the seizure of his phone were strange.

### **Mr Convery's Evidence**

[23] On the night in question Mr Convery told the court that he had dropped off a fare at Ballykelly and was heading eastwards along the Seacoast Road in the direction of Magilligan. He said he was alone in his vehicle. He said he was familiar with the road and confirmed that it was dark with a bit of rain though not heavy. He said he was travelling at 40-50 mph.

[24] Mr Convery said he saw the white van approaching the junction. However, it did not stop and made a left turn into Seacoast Road. As he was close to the junction he had to swerve to his right. Almost immediately he saw headlights coming towards him and he collided with the plaintiff's car. It all happened very quickly and, as a result of the collision, his car rebounded across the road ending up as described earlier in one of the lanes of Lomond Road.

[25] After the accident he said he was shocked but he noticed that the van was reversing back into the junction of Lomond Road. He also dialled 999. He noticed that Mr Hamilton had gone over to tend to the injured party. He also did so.

[26] Ultimately, he returned to the passenger seat of his car and waited there. Fortunately he had not sustained any serious injury in the accident.

[27] At one point Mr Hamilton, he said, came over to him and told him he was leaving the scene and he asked 'was there anything else he could do'. To this, Mr Convery made no reply.

[28] Later he said he saw Mr Hamilton driving off. He got out of his car and spoke to Constable Durkan and told him what was occurring. He said he was not shouting when he did so but that he was concerned that the person who had pulled out of the minor road causing him to take evasive action was leaving the scene. Constable Durkan told him that he had Mr Hamilton's details and he would be contacting him.

[29] Four months or so later Mr Convery made a statement to the police about the accident. He had used this to refresh his memory before giving evidence but in cross-examination it was pointed out to him that he had not said that the white van had driven out onto the Seacoast Road without stopping, which was an omission from his statement. He also accepted that it was not until his police interview (*circa* 4 months after the accident) that he had made the allegation that Mr Hamilton had reversed his vehicle after the accident in the way described above.

[30] He accepted in cross-examination that he had not seen Mrs Cooke's vehicle coming at the point where he pulled out to his right to evade the white van. He was however certain in his mind that he took this action because he believed he was going to crash into the white van.

[31] He denied he was on full beam at any time.

[32] He told the court that at one stage as he was seeking to avoid the white van he was driving parallel to it. He was clear that the part of the white van he was going to strike was the driver's side door.

[33] He denied any suggestion that he was mistaken in thinking that the van was going to enter onto the Seacoast Road.

### **Mr Hamilton's Evidence**

[34] The gravamen of Mr Hamilton's case has already been summarised and the court will not repeat the summary. It appears that on the night in question he was driving from Drumahoe to Coleraine. As already noted, his intention was to go to

the MOT centre in Coleraine. He said he was familiar with the Lomond Road which connected to the Seacoast Road.

[35] He said that as he had been travelling down the Lomond Road he had been on the phone. However his phone was connected to a device which enabled him to use it hands-free. He said that his call had been completed before he reached the junction with the Seacoast Road.

[36] He described that while at the junction in a stationery position he became aware of Mr Convery's vehicle coming down the Seacoast Road from his right and skidding. It was clear to him that in these circumstances the driver had lost control and was going across the road onto the other lane. He did not recall seeing the plaintiff's vehicle prior to the accident.

[37] Mr Hamilton was absolutely adamant that he had not sought to enter the Seacoast Road at the time of the accident and that at that time he was behind the stop line. He indicated that he believed he made a call to the emergency services speedily after the accident.

[38] The witness was of the opinion that there had been no complaint made to him by Mr Convery in relation to his (*i.e.* Mr Hamilton's) driving at or immediately after the accident.

[39] He said he only became aware of the allegation that he had been instrumental in causing the accident by emerging from Lomond Road onto the Seacoast Road, in front of Mr Convery, some 45 minutes after he had left the scene to go to Coleraine to the test centre. He said he had been contacted by the police and he agreed to return to the scene after he had conducted his business in Coleraine. When he did return to the scene later that evening the police officer put the allegation to him which he denied.

[40] Mr Hamilton agreed that when he returned to the scene he was asked by Constable Durkan to take a breath test. This he did. The result was negative.

[41] When he returned to the scene among the steps taken by Constable Durkan was that he asked Mr Hamilton to provide him with his telephone. He said he provided it. However he did not get it back from the police for a lengthy period. Initially he had concern about handing his telephone over because of its contents but he had co-operated with the officer.

[42] At the time of the accident, his view was that the plaintiff's vehicle had just passed him as his vehicle was at the stop line on Lomond Road.

[43] A number of issues were explored in cross-examination. One concerned the ownership of the white van. In the record of his interview with police made in May 2016 the second named defendant said that a man called Roy Hamilton was the



owner of the van but he later admitted that this was not correct. Roy Hamilton had been the owner, he said, but had given the van to him, though it was unclear when precisely this occurred. This led to the question of whether the vehicle at the time of the accident had been insured. In respect of this, the second named defendant appeared not to be certain that it was. The second named defendant was also asked about information found on his phone when he provided it to police which he had been anxious to safeguard and the reasons why this was so but, in the court's view, this particular line of questioning seemed peripheral to the issues in this case. Mr Hamilton was also challenged about a statement he had made during his police interview to the effect that it was not 'physically possible' for him after the accident to have reversed back into Lomond Road.

[44] Of greater importance were questions about the use of his phone prior to the accident; his belief that the Passat had skidded prior to the accident (a point not referred to in Mr Hamilton's interview with the police); and his allegedly being seen by Mr Convery reversing the van back from the Seacoast Road into Lomond Road. These matters were probed at length. In respect of these matters, Mr Hamilton maintained that he had ceased to be on the phone prior to the accident; that he had examined the state of the road because of his concern in case another accident should occur; and that he had not gone beyond the stop line in Lomond Road. In particular, he maintained that he had told a police officer about the slippery state of the road which he said he noticed some 30 yards or so to the west of Lomond Road. However, there is no reference to this in the police documentation from the time of the accident.

### **The Court's Assessment**

[45] The court has not found this case to be an easy one to decide. It is grateful for the assistance it has received from counsel: Mr Ringland QC and Mr MacMahon BL for the first named defendant and Mr Brangam QC for the second named defendant.

[46] As regards the witnesses, the court sees no reason why it ought to reject the evidence of the plaintiff as given before it. In this regard the court accepts that this witness had nothing to gain or lose dependant on the account she has given from the witness box. She was always bound to succeed and, in the court's opinion, her evidence about what occurred was credible and reliable, despite the fact that events happened out of the blue and without much time for them to be absorbed before the accident occurred.

[47] Constable Durkan, the court considers, favoured neither side and provided an objective account as far as it went. However, the court keeps in mind that he was one of a number of police officers who went to the scene and who are likely to have had some dealings with the plaintiff and the defendants. In the court's opinion, the sketch drawn by him was basic and should not be viewed as definitive. His evidence did not significantly come down in favour of either defendant and was rightly guarded in relation to any form of condemnation of either defendant. His remark

that Mr Hamilton was 'strange' when talking about the contents of his seized phone, in the court's view, should not be one seen as important evidentially in terms of the outcome of this case, for reasons the court will refer to later.

[48] Mr Convery gave his evidence with conviction but this is not to say that the court necessarily found his account convincing. It is difficult to accept his statement that at one stage his and Mr Hamilton's vehicles were travelling parallel to one another given his emphasis on the emergency nature of the manoeuvre he was carrying out, if his account is to be believed. Indeed his comment would, to the court's mind, make it more likely that what occurred is that he moved out into the oncoming lane believing that Mr Hamilton's van was going to turn left into Seacoast Road. Needless to say, the court has found it surprising that Mr Convery did not himself challenge Mr Hamilton at the scene despite the latter having spoken to him. The absence of a direct reference in Mr Convery's police statement to Mr Hamilton emerging from Lomond Road without stopping is also surprising, as was his failure to mention prior to his police interview his allegation that Mr Hamilton reversed his vehicle back into Lomond Road after the accident. The court would have expected this latter allegation to have been made in the immediate aftermath of the incident to the police, if not also to Mr Hamilton, though it appreciates that a witness in such circumstances may be in shock or not be thinking clearly.

[49] Mr Hamilton's evidence was, to the court's mind, not assisted by his apparent willingness to seek to elevate to a degree of importance issues which appear on their face to be of little importance. His reference to national security and to his intimate relationship with a female in connection with the seizure of his phone, on proper analysis, have no real significance to this case. The same applies to disputes over the return of his phone by the police. The questions about the ownership of the white van by him make it likely that he was not frank with the police about this during his police interview but the court is disinclined to attribute great weight to it in the context of Mr Hamilton's evidence taken as a whole. Understandably the issue of him using his phone prior to the accident was fully explored by counsel but in the end the court would place very little weight on this matter. The reality, it seems to the court, is that he was probably off the phone for in the region of 2 minutes prior to the accident which would mean that he would have been some distance from the junction of Lomond Road and the Seacoast Road when the call ended. The court therefore doubts if this aspect of the matter can be viewed as of importance.

[50] It is more difficult to reach a view on two issues involving Mr Hamilton. The first relates to his evidence about finding skid marks and slipperiness on the Seacoast Road to the west of the junction between Seacoast Road and the Lomond Road. Mr Hamilton maintained that he did make such a discovery and indeed he claimed he had heard the skid at the time and later noticed it on the roadway going from one lane to another. The court is cautious about accepting this evidence in view of the absence of any corroborative material *e.g.* on the part of the police to whom he claimed he made mention of it. Secondly, the court is left with a significant dispute within the evidence about whether Mr Hamilton had reversed his vehicle from the

Seacoast Road back into Lomond Road after the accident. The court finds it difficult to envisage this occurring, especially as its overall assessment of Mr Hamilton, was that he was far from a cunning man who would be likely to be able quickly to re-construct what had occurred by engaging in what would likely have been a substantial reversing procedure in the immediate aftermath of a serious accident. At the same time, the court finds itself slow to accept Mr Convery's evidence in this regard, especially as he self-confessedly did not make this allegation until months after the accident. Ultimately, the court is unable to accept as probable the account given by Mr Hamilton that the movement of Mr Convery's car into the on-coming lane was as a result of a skid. Apart from Mr Hamilton's word, there is no evidence to support this explanation for the accident and the court considers that it would not be appropriate to accept this version of the origin of the accident without corroboration. To a lesser extent, the same analysis applies to Mr Hamilton's evidence in relation to the slipperiness of the road.

[51] As a result of observing Mr Hamilton giving his evidence, the court felt that he was a man who gave his evidence in an unusually intense manner but it hastens to add that this does not mean that the court formed a negative view of his veracity in respect of the principal issues before it, save in respect of what he told the police about the ownership of the van.

[52] Overall the court must reach a conclusion on the key facts of this case on the balance of probability. It accepts that it is possible that Mr Convery's account could be correct but, on balance, the court finds against his version of events and in favour of Mr Hamilton's version, insofar as it must accept one or other version, which, in the court's view, it has to do.

[53] In the court's opinion, Mr Hamilton's account better chimes with the evidence of the plaintiff. The court believes that the plaintiff's account is correct where she said that she had first seen the headlights of the vehicle in Lomond Road which lit up the right hand side of her vehicle. She then moved on before seeing the Passat's lights coming towards her, which she thought were on full. Then the collision occurred. The court is inclined to the view that the plaintiff's car had gone past Mr Hamilton's van in Lomond Road, where it was stationary at the stop line, when Mr Convery then crashed into her, knocking her car backwards in the direction in which she had come. In the court's opinion the likelihood is that the accident happened because Mr Convery wrongly believed that Mr Hamilton's vehicle was driving or going to drive out onto the Seacoast Road without stopping. Because of this, Mr Convery moved from one lane into the other when in fact this was not required. In the process of doing so, unfortunately he failed to see the plaintiff coming towards him and he was unable to stop in time to avoid a collision. The court does not consider that it has been shown to have been likely that Mr Hamilton simply drove his vehicle left into Seacoast Road without stopping. This would have been an extraordinary thing for Mr Hamilton to have done when driving in darkness along a minor road at its junction with Seacoast Road. While no doubt all things are possible, the court considers that this is unlikely. Likewise the court is of the view

that it is unlikely that Mr Hamilton after the accident would have reversed his vehicle back into Lomond Road in order to cover up his tracks. The court strongly doubts that Mr Hamilton is a person who could or would have been able to think through and execute a manoeuvre of this kind in the immediate aftermath of an accident of this severity. It is also noteworthy that this allegation was not made by Mr Convery at the time. While Mr Convery may have thought that Mr Hamilton did act as he alleged, the court believes he was mistaken.

[54] The court therefore is unpersuaded that the first named defendant is correct and prefers the version of events provided by the second named defendant, at least as regards the essentials in this case, as more likely to be correct.

[55] While it is strictly unnecessary for the resolution of this case, given the findings referred to above, the court considers that another way of reaching the same conclusion is available in the particular circumstances before it.

[56] In the court's view, once the first named defendant says, as he was forced to do in this case, that he left his lane going east and entered the plaintiff's lane going west and collided with the plaintiff's car, there then exists a *prima facie* case against him and a concomitant need on the first named defendant's part to persuade the court that the second named defendant was, in whole or in part, responsible for the accident by reason of his behaviour in driving onto the Seacoast Road without stopping, so inducing an emergency situation which required the first named defendant to swerve into the west bound lane and collide into the plaintiff's vehicle<sup>2</sup>.

[57] In the court's opinion, it is not satisfied that this is a case where the first named defendant has shifted any of the responsibility to the second named defendant.

## **Conclusion**

[58] In the event, the court finds in favour of the plaintiff and awards the agreed quantum figure against the first named defendant. At the same time, it dismisses the case against the second named defendant. As regards costs, the court considers that these should follow the event in the usual way, though it is willing to convene a hearing on this aspect if asked to do so within 7 days from the promulgation of this judgment.

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<sup>2</sup> Reference to a similar approach is found in such cases as *Richley v Faull* [1965] 3 AER 109 and *Powell v Auden* [2009] AER (D) 174.