

Court Ref: PIC-PN2279/19

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH
IN THE ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT

JUDGMENT by SHERIFF K J CAMPBELL QC

in the cause

DERREN MOFFAT

PURSUER

against

T W BRADLEY CONTRACTS LTD.

DEFENDER

Act: Swanney adv; Digby Brown solicitors, Glasgow
Alt: Ireland; DAC Beachcroft solicitors, Glasgow

Edinburgh 9 August 2021

Findings in Fact

1. On 18 October 2018 the pursuer was working during the course of his employment with the defender at the defender's premises at 15 Carlibar Road, Barrhead, Glasgow, G78 IAA ("the premises").
2. The premises were under the defender's occupation and control.
3. The premises were a workplace in terms of Regulation 2 of the Workplace (Health, Safety, & Welfare) Regulations 1992.
4. There is a garage situated within the premises.
5. The defender is the occupier of the premises, including the garage, in terms of s.2 of the Occupiers' Liability (Scotland) Act 1960.

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6. The garage contained a service pit. The service pit was a rectangular open area, and was, approximately, 1.5m in depth.

7. Employees of the defender worked in and around the service pit. They had to walk past the service pit when walking from the entrance of the garage to the rear of the garage.

8. There were tools and equipment situated around the service pit.

9. The floor within the garage was a traffic route in terms of Regulations 2, 12 and 17 of the Workplace (Health, Safety, & Welfare) Regulations 1992.

10. The defender undertook no risk assessment of the risks of injury faced by employees from tools and equipment, including cables, lying exposed on the floor of the garage.

12. On 18 October 2018, there was at least one electrically-powered lift in the garage, used for lifting buses to a suitable height for inspection and repair. The lift had four, separately moveable, posts, which were connected by electrical cables. The lift was located in the bay adjacent to the service pit.

13. On 18 October 2018, at around 16:15, the pursuer fell into the service pit and sustained injury.

14. At or about the time of the pursuer's accident his colleague Ronald Connor was driving a bus into the garage.

15. At the time of the accident, cables from the electrically-powered lift were lying on the floor adjacent to the inspection pit. There were also air hoses for compressed air tools lying on the floor adjacent to the inspection pit.

16. The defender gave no formal instruction about guiding or refraining from guiding buses into the garage. There was an established and common practice amongst the defender's staff of doing so. That practice was informed in part by the angle at which it was necessary to drive into the garage from the yard outside.

17. At the time of the accident, the pursuer was walking towards the rear of the garage relative to the entrance. The pursuer was walking backwards.

18. As he walked towards the rear of the garage, the pursuer caught his foot on a cable adjacent to the inspection pit. As a result, he stumbled and fell into the inspection pit.

Findings in Fact and Law

1. The pursuer has suffered loss, injury and damage as a result of the fault and negligence of the defender.
2. The pursuer by his own negligence contributed to the accident.

Note

Introduction

1. This action concerns an accident which befell the pursuer in the course of his employment with the defender on 18 October 2018. It is a matter of agreement that in the late afternoon of that day, he fell into an inspection pit in a garage at the defender's premises and suffered injury. The primary issue of fact for the court is determining how that happened.
2. I heard proof on 13 and 14 July 2021, by webex videoconference. The pursuer gave evidence and led evidence from Ronald Connor. The defender led evidence from Ronald Bonds, John Cusack and Thomas Gebbie. A joint bundle was produced, and items from it are referred to as "JB" plus the page reference.

3. Parties had helpfully agreed a good deal of uncontroversial evidence in an extensive Joint Minute. The factual matters are incorporated in findings in fact 1-13. There was also agreement about the provenance and content of reports by Mr Chan, consultant orthopaedic surgeon (5/1), Dr Graham, consultant psychiatrist (5/2), records of the Scottish Ambulance Service (5/3 & 5/7), the pursuer's GP (5/4), Royal Alexandra Hospital (5/5 & 5/6), locus photographs (5/8 & 6/1), earnings information (5/11), a Health and Safety Executive approved Code of Practice and guidance anent the Workplace (Health Safety and Welfare) Regulations 1992 (5/13), and an accident report (6/1).
4. Parties were further agreed that, in the event of the defender being found liable to make reparation to the pursuer in respect of the accident, damages should be assessed at £40,000 inclusive of interest to the date of proof, subject to any deduction in respect of a finding of contributory negligence.
5. A supplementary Joint Minute was lodged the day before the proof in terms of which matters were focussed further. The parties there agreed:

"1. That in the event of the Court finding that the pursuer fell into the service pit as a result of tripping over cables which were lying on the floor of the garage, the defender is liable to make reparation to the pursuer, subject to any deduction in respect of a finding of contributory negligence.

2. The issues for determination by the Court are therefore: i) whether the pursuer fell into the service pit as a result of tripping over cables which were lying on the floor of the garage; and ii) if he did, to what extent the pursuer's own negligence contributed to him doing so."

Witnesses

The pursuer

6. Derren Moffat, the pursuer, is 50 years old. He currently works as a taxi driver. In 2018, he was employed by the defender company, which is a bus company. The pursuer had

various duties including ~~driving~~ buses and helping in the garage. Though he was not formally designated as a mechanic, he was involved in changing tyres, fixing exhausts and brakes, and some welding.

7. The bay within the garage where the accident occurred had an inspection pit. The pit was uncovered. In the next bay was a vehicle lift, comprising four separately moveable lifting posts, to each post was attached a cradle to enable lifting vehicles by the wheels. There were electric cables connecting the lifting posts. The cables lay on the floor, though the pursuer could not recall whether they were lying straight or looped. The cables were very close to the inspection pit.
8. At the time of the accident, the pursuer had been about to move a vehicle in the yard; he saw Ronnie Connor driving a bus toward the garage. He went to guide the bus into the bay where the inspection pit was. He said that someone would guide a bus every time one was brought in or out of the garage. That would be four or five times a day. All the mechanics did so, including Ronnie Connor and Ronnie Bonds. They had guided him into the garage on occasions. Guiding buses in this way was done without the driver asking; if you saw a bus, you guided it in. It was done for safety, because you did not want to get one of the bus wheels into the pit. The pursuer dismissed as ludicrous the notion that employees were not supposed to guide buses into the garage. Thomas Bradley, the boss, was on the workshop floor every day; the pursuer said he was for ever popping in.
9. The pursuer saw Ronnie Connor driving a 17-seater bus into the garage. The pursuer understood he was bringing it into the garage to clear space in the yard outside. The pursuer walked towards the back end of the garage to guide Mr Connor over the pit. Space was tight on the left and the pursuer said he did not want the wheels to fall over the pit. The pursuer was walking on the right hand side of the pit, viewed from the entrance to the garage. He said he was walking facing the back of the garage. When he was about the middle, less than half way along the length of the pit, he caught his foot in the lifting cables – meaning the electrical cables connecting the lifting posts. He did not

know if he had then caught his left foot in the metal edge of the inspection pit. He lost his balance and fell into the pit.

10. The cables are big and heavy, and about an inch (25mm) thick. They lie on the garage floor and connect the lifting posts. Examples are seen in JB200, 202, 203, 413. Photos JB199-203 were taken by the pursuer on a working day in January 2019. He believed Ronnie Connor, Ronnie Bonds and a couple of drivers were in the garage then. In contrast to photo JB413, on the day of the accident the cable was not coiled round the control box, but was on the floor. In the pursuer's view, JB200 was more like the scene on the day of the accident. On the day of the accident the cables were closer to the pit than those in JB406.
11. The pursuer said that his foot was in great pain when he fell. He had to wait about an hour for an ambulance to arrive. During this time, he was worried because he does not like being in hospital. He vaguely recalled being asked what happened by ambulance personnel. The record at JB112 that he was "walking backwards fell on foot" was not correct. The pursuer was adamant he was walking forwards.
12. The pursuer was shown 5/14 of process, a video clip which he took on his phone during a site visit to the defender's premises on 7 January 2021. In this clip which lasted approximately a minute, a male was seen to approach the camera and address the pursuer in a threatening tone. The pursuer identified the male as Thomas Bradley, the principal of the defender. The pursuer said Mr Bradley had a bad temper, and when things did not go right, he took it out on people.
13. In cross-examination, the pursuer confirmed that his father had died shortly before the accident. He had had a day off for the funeral, but returned to work on the day of the accident. The pursuer said he coped with his loss by going to work. It was put to the pursuer that there was no requirement to guide in buses which were coming into the garage facing forwards. The pursuer said if that was the case, no one told him that. It was put to the pursuer that he was guiding the bus while walking backwards, and he tripped;

the cables had nothing to do with it. The pursuer emphatically denied that, and repeated he had been walking forward and his foot had caught a cable.

14. It was put to the pursuer that he had previously said he was walking backwards at the time of the accident. In particular, that was recorded by the medical personnel at the Royal Alexandra Hospital (JB112, and JB 134-5). The pursuer said those were not correct. It was also recorded in precognitions seen and referred to in an expert report prepared by Mr Ronald Knak for the pursuer's agents (5/16). In a precognition of 14 February 2019, quoted at JB 393, the pursuer was noted to have said he was walking "sort of sideways" beside the pit. In a precognition of 20 May 2019, he was noted as having said he was "walking forward to the end of the pit". The pursuer said he may have been picked up wrongly. He was adamant he was walking forwards. In an accident report JB425, the accident was recorded, by Lorraine Johnston of the defender, as "Derren was backing a vehicle towards the pit." The pursuer had not seen that before, and did not know what was meant by "backing a vehicle", because Ronnie Connor was driving the vehicle.

Ronnie Connor

15. Ronnie Connor is 63 and at the time of the accident in October 2018 was employed by the defender as a mechanic. He is not currently working due to a number of health problems. At the time of the accident, he was driving a bus into the garage. It could be quite difficult driving a bus into the garage because it is necessary to go in at an angle as the nearside is tight to a wall. Everyone in the garage guided others into the garage; that included the mechanics (meaning Mr Connor, the pursuer, and Ronnie Bonds) and the boss, Thomas Bradley. People did not have to be asked – they automatically assumed you would guide others. Mr Connor had done so for others. While it is not necessary to have someone guiding you in, it is better to do that. It is more difficult to drive a bus in without being guided and could be dangerous because with shorter buses the tyres might barely be over the inspection pit.
16. The pursuer was guiding Mr Connor into the garage. He started in front of the pit. He was guiding Mr Connor's bus by waving his hand to go forward, left or right. He was walking backwards, and was walking to the side of the pit. He fell down into the pit at

the front. When asked what caused the pursuer to fall, Mr Connor initially said he just saw the pursuer fall. He was in a bus and was about 6 feet (2m) from the pursuer.

17. Mr Connor was shown production 6/2 (JB418) to jog his memory. That document is signed by him and is in his wife's handwriting. It is written on what appears to be the defender's letter paper, and is dated 14 June 2019. It is in the following terms:

"It is my recollection of the incident that happened on 18th October last year (2018) that Derren Moffat was in the garage area as I was about to drive over the pit with a bus. Derren was guiding me on from the front of the pit. He tripped over cables for the lifts and I saw him fall sideways in to the put. I went to get my colleague Ronnie Bonds and he went in to the pit to sit with Derren while I went to get help. I went to the office to tell Lorraine and she contacted NHS24. Approximately one hour later an ambulance & para medics arrived."

18. Mr Connor explained that his memory of events was better in June 2019. He had since had a mini-stroke, and that is why he is no longer working. He said that having seen the document, he did not know if the pursuer had tripped over cables, but there were certainly cables and air hoses (for tools operated by compressed air), lying in front of the pit. He thought those were about 2 feet from the pit. They were not being used at the time the pursuer fell into the pit. Photograph JB201 showed how the garage looked day-to-day, and was similar to how it looked on the day of the accident.
19. In cross-examination, it was put to Mr Connor that when first asked about the accident, he had not mentioned the presence of cables. He said that he had not been asked about that, but had been going to mention it when the statement was put to him. He said again that he did not see what the pursuer tripped on, and that there definitely were cables on the floor. The pursuer had been walking backwards and was turning to the side.

Ronnie Bonds

20. Ronnie Bonds is a mechanic and is employed by the defender. He has worked for the defender for about five and half years. He was working at the garage on the day of the accident. He did not see the accident, but heard the commotion and ran round and saw the pursuer lying in the inspection pit. Ronnie Connor was standing at the top of the pit,

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and he said the pursuer was in the pit and had been walking backwards and had fallen into the pit. Ronnie Connor was at the end of the pit nearest the entrance to the garage.

21. Mr Bonds said that occasionally employees would stand at the top end of the bay and wave in a bus, waving to the left or right. Walking backwards while doing was, he said, new to him. Mr Bonds was surprised to see the pursuer that day; he understood the pursuer's father had died the day before. Mr Bonds had gone down into the pit, and rested the pursuer's head on his knee. The pursuer was coming and going. He did not really give any explanation of what had happened. Mr Bonds had looked around and there was nothing there to make the pursuer fall. He said the cable were wrapped up.
22. In cross-examination, Mr Bonds said the cables for the lifts were on the ground when in use, but were put up on hooks when not in use. He later clarified that to say they were put up at the end of the day. He explained this was a busy workshop with buses coming in and out.

John Cusack

23. John Cusack is 59. He is a bus driver, and has been employed by the defender for 13 or 14 years. He was working on the day of the accident. He did not see the accident. He had arrived back at the yard after the accident, but while the pursuer was still in the pit. There might have been an ambulance crew member there, and Thomas Gebbie and Ronnie Bonds were there. The pursuer was in a distressed state. He had asked the pursuer what happened. The pursuer said he was reversing a bus and had fallen into the pit. He had not given more detail at the time. Later, in hospital, the pursuer had said it was his own fault "I went down that was it." He had not said what direction he was walking in, nor mentioned anything he might have tripped on. Mr Cusack did not see any cables on the floor, but he was more interested in seeing the pursuer was okay. Mr Cusack was not cross-examined.

Thomas Gebbie

24. Thomas Gebbie is 53. He is a bus driver and has worked for defender for over 20 years. He was working on the day of the accident. He did not see the accident. As he drove into the yard he was told the pursuer had fallen into the pit. He had gone to the garage. Ronnie

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Bonds was there and a number of others. The pursuer was awake and had repeatedly asked him to help him out of the pit. Ronnie Bonds said he had to wait till the ambulance arrived. The pursuer was lying in about the middle of the pit. Mr Gebbie asked the pursuer what happened. The pursuer said he walked backwards into the pit. Mr Gebbie had socialised with the pursuer a few times while he was convalescing. The pursuer had never said anything about tripping over cables. The pursuer had said he had been stupid.

Submissions

25. Both parties tendered written submissions on the final day of the proof. Having adopted their respective written submissions, Mr Swanney and Mr Ireland each indicated they intended primarily to respond to the other's written submission in the course of oral argument. Having brought the issues into short compass by means of the two Joint Minutes, it seemed to me that was an appropriate approach. The written submissions are in process, and I therefore require only to summarise them and the points made in oral argument.

Pursuer's submissions

26. On behalf of the pursuer, Mr Swanney moved me to:

- (a) grant decree against the defender for payment to the pursuer of the sum of £40,000 inclusive of interest to date, net of benefits recoverable under the Social Security (Recovery of Benefits) Act 1997, with interest on that sum at the rate of 8% per annum;
- (b) in respect of the expenses of the action, to fix a hearing on expenses;
- (c) certify Mr. Pete Chan, consultant orthopaedic & trauma surgeon; Dr Una Graham, consultant psychiatrist; and Mr Ron Knack, consulting engineer as skilled persons; and
- (d) to find the cause as suitable for the employment of junior counsel.

27. Mr Swanney submitted that by virtue of the supplementary Joint Minute, parties had restricted the scope of the breach of duty element of the claim to the question of whether or not the pursuer fell into the service pit as a result of tripping on cables present on the garage floor. If the Court found the pursuer did so trip on cables, then it was agreed the defender is liable to make reparation to the pursuer, subject to any deduction in respect of a finding of contributory negligence.

28. There were two key factual disputes in this case. Most crucial was whether or not the pursuer tripped on cables which were lying on the garage floor. The second issue was the direction in which the pursuer was walking when he fell. That was not in principle determinative on its own of contributory negligence, but given the evidence led it was submitted that any finding of contributory negligence rests on the question of whether pursuer was walking backwards at time or not. Mr Swanney accepted this is a case in which the credibility and reliability of parties and their witnesses would be central to the court's considerations. That was ultimately a matter for the court, and Mr Swanney sought to highlight a number of matters.
29. The pursuer said he tripped on a cable, which connected two posts of a lift which was located next to the service pit. His evidence was his foot caught on the cable and he lost his balance, stumbling and falling down into the pit, landing on his feet. He was honest enough to acknowledge that he might after stumbling have caught his foot on the metal lip around the service pit, but (a) he was clear that he caught his foot on the cable and lost his balance, and that he would not have fallen into the pit if he had not done so; and (b) his evidence in relation to the metal lip was no more than he didn't know but he might have caught it as he fell.
30. The pursuer's evidence in respect of the presence of cables is consistent with: (a) the evidence of Ronnie Connor; (b) The post-accident handwritten statement of Ronnie Connor, which was prepared closer to the accident than the Proof at a time when his recollection was better than it was at proof; (c) The photographs taken by the pursuer in January 2019 (JB199-203), which clearly show cables from an extension lead and a cable from the lift posts lying in loose loops in and around the service pit; (d) Mr Bonds' oral evidence as to the general appearance of garage floor – despite beginning his evidence in chief that *"When not operating the cables for the lifts were hung up on hooks"*, he altered his position in cross examination to say they (the mechanics) actually only tidied up at the *"end of the day"* and that on a garage floor there *"are always things lying about"*.

31. The pursuer gave clear evidence that he was walking forwards to the end of the pit, that is the end furthest away from the entrance to the garage, when he fell. His intention was to get there and then give Ronnie Connor the hand signals to guide him in. The pursuer acknowledged this is at odds with his witness, Ronnie Connor, who was the only other witness to this accident. Mr Swanney submitted the pursuer's evidence on this should be preferred, because Mr Connor's evidence was that due to his health issues his memory in June 2019 was better than it is now, and in his statement at 6/2 there is no mention of the pursuer walking backwards. Mr Swanney invited me to accept the evidence of the pursuer generally. He submitted that the pursuer gave evidence in a straightforward manner. He was honest. He made appropriate concessions. His evidence on the presence of cables was largely consistent with that of his witness, Mr Connor, and the photographs not just taken by himself, but also by the defender's own Claims Investigator, and the evidence of Mr Bonds.
32. Mr Swanney further submitted that given what appeared to be Mr Bradley's temperament and intimidatory bearing in the video lodged at 5/14, it was important Mr Connor, of all the employee witnesses who gave evidence, and who were present at the time of the accident, is the only one no longer employed by the defender. He has no vested interest in this case. It militates in favour of Mr Connor's evidence being reliable and honest. He was trying his best to recollect events despite his health difficulties.
33. Mr Bonds did not see the pursuer's accident, and it was submitted little or no weight ought to be placed upon his evidence about how it happened. His evidence about the presence of tools and equipment such as cables on the floor around the service pit was confused and contradictory. He originally said that cables and wires would be tidied away when not in use – *"When not operating the cables for the lifts were hung up on hooks"* but, then in cross, when the photographs at 5/8 were put to him, his position changed to say they were actually only tidied up at the *"end of the day"* and that on a garage floor there *"are always things lying about"*. The impression was of man who was trying to assist his employer more than the Court. Mr Swanney invited me to find Mr Gebbie's evidence to be neither reliable or credible. He says the pursuer told him that he was walking



backwards when he fell. That was the reason Mr Gebbie was called however it is again submitted that the impression was of an employee doing his best not to get an employer into trouble. Mr Cusack was generally credible, but added little.

34. On the issue of contributory negligence, the pursuer's primary position was that he was walking forwards along the side of pit, making his way to the end of pit to start guiding Ronnie Connor. In those circumstances, it was submitted that tripping on a cable present on the floor is no more than the momentary inadvertence or inattention of the sort that ought not to attract a finding of contributory negligence. If the court found that the pursuer was walking backwards at the moment he tripped on the cable, then the pursuer accepted some deduction for contributory negligence would be appropriate.

Defender's submissions

35. On behalf of the defender, Mr Ireland's primary motion was for absolvitor. If I found that liability was established, his submission was that any damages should be modified by a substantial finding of contributory negligence. He agreed there ought to be a hearing on expenses.
36. Mr Ireland submitted I could and should resolve the conflict in the evidence as to whether the pursuer was walking backwards or forwards in the defender's favour. The direction in which the pursuer was walking is an essential averment the pursuer has offered to prove. The pursuer has given inconsistent accounts (see the narration of his precognitions in Mr Knak's expert report 5/16 at JB391ff). His initial account of walking backwards is supported by entries in the RAH medical records JB112 and by the accounts of the defender's witnesses. If the court accepted he was walking backwards, this was an adverse finding contrary to what the pursuer has offered to prove and should also entitle the court to hold that there were no cables in his path that were the cause of his fall into the pit.
37. Mr Ireland submitted there was no reason why the evidence of his three workmates, Messrs Cusack, Bond and Gebbie should not be preferred to that of the pursuer and Connor on cables and the pursuer's direction of walking at the time. The pursuer had

every opportunity to make initial mention of cables but did not do so. Even if affected by pain or confusion in the immediate aftermath of his accident, when in the pit, there are two separate and identical accounts in the RAH records JB112 which clearly record a history of falling into a pit whilst walking backwards. These accounts were given some 2 hours or so later. He submitted it had not been suggested that their evidence had been in some manner of way contrived or that they had been influenced by their employer. In cross-examination, the pursuer did not give a credible account of why the medical records recorded a contrary version. Why, he asked rhetorically, should two apparently different doctors "assume" he was walking backwards? Did Mr Knack "assume" this? Did the taker of his initial precognition?

38. Mr Ireland submitted the pursuer's position on direction of walking was inextricably linked with his version of the location of the cables over which he tripped. On the pursuer's evidence there is no scope for doubt or hesitation as to his direction of walking. Time and time again the pursuer stated he was walking into the garage. There is no doubt that, cables or no cables, Mr Connor had the pursuer walking backwards then latterly sideways and falling at the front of the pit. He stated clearly in his evidence in chief that the pursuer did not go up the side of the pit but fell in at the front "Right at the very front". He was 6 feet away.
39. If the court was not with the defender and held that liability is established, then on the pursuer's own evidence there was contributory negligence. If the accident did occur as the pursuer contends, in the interior of the garage whilst walking to the rear of the pit, the pursuer knew of the presence of cables. He claims that cables were regularly strewn on the floor. He had no compelling need to assist Mr Connor. He was not expected to do so. The cables were there to be seen. He had chosen to attend work when not expected to do so. His workmates had queried this. He may have been distracted by the recent death of his father. On this scenario, it was accepted on the authorities that the scope for a significant deduction is not high perhaps around 25%.



40. If however the court is of the view that it can hold both that the pursuer fell at the front of the pit whilst walking backwards and tripped over cables then there is scope for a significant degree of contributory negligence. Buses ought to be guided from the rear of the pit. Walking backwards in the direction of an open pit is an obvious danger. The pursuer was familiar with the layout of the premises. He was not required or instructed to assist Mr Connor. Again he was perhaps distracted. It was submitted that contributory negligence should be assessed at 75%

Analysis and decision

41. I have indicated above that in their supplementary Joint Minute, parties were agreed about issues for determination. In my view, standing the matters agreed in the first Joint Minute, and the sweep of the evidence led, the issues for determination by the Court are indeed (a) whether the pursuer fell into the service pit as a result of tripping over cables which were lying on the floor of the garage; and (b) if he did, to what extent the pursuer's own negligence contributed to him doing so. As both parties recognised in their submissions, those matters are quintessentially questions of fact, and will be resolved on the court's assessment of the witness evidence.
42. There were only two people present at the time of the accident: the pursuer and Ronnie Connor. The pursuer said he was walking forwards or possibly sideways towards the rear of the garage with the intention of guiding Mr Connor's bus into the garage, over the inspection pit. He said there were cables and possibly compressed air hoses on the floor adjacent to the pit. The pursuer said he caught his foot in a cable, and stumbled and fell into the pit. He may have caught his foot on the metal lip of the pit as he did so. It appears reasonably clear that he has on other occasions said he was walking backwards.
43. Mr Connor said the pursuer was walking backwards. He said in evidence he did not see what caused the pursuer to trip. He said there were cables and hoses on the floor in front of the pit, and was clear about that when pressed in cross-examination. He saw the pursuer fall into the pit. In the written statement from 14 June 2019 (6/2 JB418), Mr Connor said the pursuer "tripped over cables for the lifts" and fell sideways into the pit.



44. I accept the pursuer's evidence of what he intended to do, namely guide Mr Connor's bus into the garage, and that doing so was following a well-established practice in the garage. I accept his evidence that he caught his foot in a cable on the floor. I do not accept his evidence that he was walking forward at the time. I hold that he was walking backwards. His account to medical personnel (JB112 and JB134-5) was given on the day, and is, I think, more likely to be correct. I accept Mr Connor's evidence as credible and, subject to his health problems, reliable. I consider his written statement (6/2) fills the gaps.
45. It seemed to me that the witnesses adduced by the defender were led to fortify a challenge to the pursuer on the basis he had previously said he was walking backwards, or having in some way professed fault. It is important to emphasise, however, that none of those witnesses actually saw the accident, and while the question of the direction in which the pursuer was walking is important in relation to contributory negligence, it does not answer the question of primary liability. Mr Bonds was witness who gave the most extensive evidence for the defender about the cables. I do not accept Mr Bonds' evidence about that. Having regard his rather argumentative response to cross-examination, I consider that he was motivated as much by a desire to assist the defender as to assist the court. I consider that the same can be said of Mr Gebbie.
46. Accepting as I do the evidence of the pursuer and Mr Connor, I am satisfied on a balance of probabilities that there were cables and air hoses on the floor. This was a working garage, and on the evidence it was busy throughout the working day. It may well be that the hoses and cables were stowed each night, but it strains credibility to say they were put away each time they were used. To say that they would – or could - not be on the floor in the path of a bus coming into the garage is not consistent with the photographs (see JB199-201, especially JB199). I am satisfied the pursuer caught his foot in such a cable.
47. On the agreed formulation of the issues, in my opinion, that is sufficient to establish breach of duty on the defender's part. However the issue of contributory negligence also requires to be addressed, and I have summarised parties' submissions about that.



48. I consider that the pursuer must be held to have contributed to the accident. He knew the inspection pit was there. It was in any event an obvious hazard, even if the yellow paint around the edge was very worn at the time of the accident. Further, I have held that the pursuer was walking backwards at the time of the accident. The pursuer also knew there were cables on the garage floor, both as a matter of generality and on the day of the accident. In the face of a known risk, that goes beyond momentary inadvertence on the pursuer's part.
49. Apportionment of responsibility is a matter of impression rather than scientific calculation. Taking the evidence in the round, I consider that responsibility should be apportioned 50% to the defender and 50% to the pursuer.

Conclusion

50. I will therefore pronounce decree in favour of the pursuer for the sum of £20,000. I will fix a hearing on expenses, including the matters of certification of skilled witnesses and sanction for counsel.



