**www.credithirebarrister.com**

**Comprehensive insurance, courtesy cars and credit hire**

**By Andrew Hogan[[1]](#footnote-1)**

**Introduction**

1. Some credit hire claims, particularly where the claimant is impecunious and without ready funds to replace a wrecked motor vehicle, can swiftly rise to many thousands or tens of thousands of pounds. Sometimes, a claimant may have the benefit of a comprehensive insurance policy, which, if called upon would permit the replacement of the car and prevent substantial credit hire charges from accruing.

2. Often the claimant will elect not to make a claim on his comprehensive insurance policy, fearing that it might lead to the loss of a no-claims bonus, or otherwise prejudice his ability to obtain motor insurance in the future.

3. If such a claimant chooses not to make a claim on his comprehensive insurance, does this constitute a failure to mitigate his loss ? To date those representing claimants have argued successfully that because independently purchased insurance benefits are to be regarded as *res inter alios acta*, they may not be relied upon by a defendant tortfeasor to reduce or extinguish his liability to the claimant.

4. But there are respectable arguments that even on the basis of the existing authorities, the argument that failure to claim on a comprehensive insurance policy to mitigate loss, is a legitimate point for a tortfeasor to take.

5. There are further arguments derived from American jurisprudence, which would go further and indicate that, it is an area where the legislature can reform the law, to produce what some commentators would regard as a more just result.

**Res inter alios acta in English law**

6. Any survey of English law on the principle of res inter alios acta, starts with the case of **Bradburn.v.The Great Western Railway Company**[[2]](#footnote-2). That case was concerned with whether judgment having been given for the claimant for the sum of £217 in respect of compensation for an injury arising from the defendant’s negligence, the proceeds of a policy of accident insurance amounting to £31 which the claimant had prudently effected, should be offset or deducted from the judgment sum. The court rejected firmly the notion that it could be so deducted, Bramwell B stating:

*In Dalby.v.India and London Life Assurance Company it was decided that one who pays premiums for the purpose of insuring himself, pays on the footing that his right to be compensated when the event insured against happens is an equivalent for the premiums he has paid; it is a quid pro quo, larger if he gets it, on the chance that he will never get it at all. That decision is an authority bearing on the present case, for the principle laid down in it applies, and shews that the plaintiff is entitled to retain the benefit which he has paid for in addition to the damages which he recovers on account of the defendant’s negligence.*

Pigott B stated:

*The plaintiff is entitled to recover the damages caused to him by the negligence of the defendants and there is no reason or justice in setting off what the plaintiff has entitled himself to under a contract with third persons, by which he has bargained for the payment of a sum of money in the event of an accident happening to him. He does not receive that sum of money because of the accident, but because he has made a contract providing for the contingency; an accident must occur to entitle him to it, but it is not the accident, but his contract, which is the cause of his receiving it.*

7. The judgments are masterpieces in brevity, but a number of important principles were either established or restated in this case. The first is that the real mischief that the court was concerned to prevent, was the notion that the damages due to the claimant could be reduced, to the net benefit of the tortfeasor.

8. The second is to note, that the payment of the insurance benefits in this case, an accident policy, did not give rise to a right of subrogation on the part of the insurance company to recoup its payment to its assured.

9. The third is to note that the justification for the decision was grounded in either remoteness, causation or pure public policy, that a tortfeasor, should not take advantage of the prudence of the claimant in insuring against a particular loss to reduce his own liability, as the claimant’s actions were too remote, or the benefits were not caused by the accident, or the arrangements the claimant made prior to the accident for his own benefit, were none of the tortfeasor’s business: the Latin tag of, res inter alios acta.

10. Over the years the doctrine became firmly established, throughout the common-law jurisdictions, including the United States of America, and was given there, the name of the collateral source rule. It functioned both as a substantive rule of law, precluding insurance benefits from being deducted from an injured party’s damages and a rule of evidence, precluding evidence of such benefits being put before the courts.

11. By 1950, the position in England and Wales could be formulated by the Court of Appeal in these terms in the case of **Shearman.v.Folland[[3]](#footnote-3)**:

*What in a given case is, and, what is not collateral ? Insurance affords the classic example of something which is treated in law as collateral. Where X is insured by Y, against such injury which comes to be wrongly inflicted on him by Z, Z cannot set up in mitigation or extinction of his own liability X’s right to be recouped by Y, or the fact that X has been recouped by Y. Bradburn.v.GWR, Simpson.v.Thomson. There are special reasons for this. If the wrongdoer were entitled to setoff what the plaintiff was entitled to recoup or had recouped under his policy, he would in effect be depriving the plaintiff of all benefit from the premiums paid by the latter and appropriating that benefit to himself.*

12. Fast forward a hundred years from **Bradburn**, and the landmark decision of **Parry.v.Cleaver**[[4]](#footnote-4) is reached, which was grounded firmly in the reasoning noted above. The facts of **Parry.v.Cleaver** repay very careful reading. A police constable was injured in a road traffic accident. He had made compulsory contributions to a police pension fund: he got a disablement pension as of right, when invalided out of the force. Was the pension, to be taken into account when assessing his damages ? The House of Lords by a majority of 3 (Lords Reid, Wilberforce and Pearce) to 2 (Lord Morris and Lord Pearson), held that the pension should be left out of account.

13. Lord Reid stated in his speech[[5]](#footnote-5):

*As regards moneys coming to the plaintiff under a contract of insurance, I think that the real and substantial reason for disregarding them is that the plaintiff has bought them and that it would be unjust and unreasonable to hold that the money which he prudently spent on premiums and the benefit from it should enure to the benefit of the tortfeasor. Here again I think that the explanation that this is too remote is artificial and unreal. Why should the plaintiff be left worse off than if he had never insured? In that case he would have got the benefit of the premium money: if he had not spent it he would have had it in his possession at the time of the accident grossed up at compound interest….*

Like concerns were expressed in the concurring speeches of the majority: what is striking is that all the speeches are expressed in the context that accident insurance benefits, incapable of giving rise to a subrogated claim for recoupment, should not be deducted from the damages due to the claimant to the net benefit of the tortfeasor.

14. It can be submitted that the case has nothing to say at all, about whether a claimant can be reasonably expected by the doctrine of mitigation of loss to claim on a comprehensive insurance policy, where the quantum of any such claim will be pursued in a recovery action by the road traffic insurance company, utilising its subrogation rights. In such a scenario, the defendant tortfeasor will pay the full value of the damage to the car caused by the tort, but the claimant will have largely avoided the need for substantial credit hire charges and in so doing will have mitigated his loss.

15. Indeed if one considers the public policy justification said to preclude any such argument arising, the notion of deduction of benefits, simply does not arise.

16. So why is this argument not run (or run successfully) in the county courts?

17. The reason on a careful survey of authority, is that it has been successfully argued in a number of cases of persuasive authority, that the principle of res inter alios acta, or the collateral source rule, is rather wider than the key authorities noted above would suggest, and the matter has not been grappled with directly in any of the key decisions in the appellate courts in the context of credit hire.

**The credit hire cases**

18. The principle of res inter alios acta, was directly in play in the leading House of Lords case of **Dimond.v.Lovell[[6]](#footnote-6)** where it was sought to be argued, that the tortfeasor having caused the damage to and the loss of use of the claimant’s vehicle, the fact that a replacement credit hire vehicle had been supplied under a non-enforceable credit hire agreement, was to be disregarded as an example of a benefit that was res inter alios acta, and did not serve to diminish the tortfeasor’s liability: which would have enabled the credit hire company to neatly avoid the effects of unenforceability under the Consumer Credit Act 1974. Rejecting the point Lord Hoffman noted this:

*But since high water the tide has retreated. The courts have realised that a general principle of res inter alios acta which assumes that damages will be paid by "the wrongdoer" out of his own pocket is not in accordance with reality. The truth is that virtually all compensation is paid directly out of public or insurance funds and that through these channels the burden of compensation is spread across the whole community through an intricate series of economic links. Often, therefore, the sources of "third party benefits" will not in reality be third parties at all. Their cost will also be borne by the community through taxation or increased prices for goods and services.*

He continued:

*The House treated the two cases mentioned by Lord Reid in Parry v. Cleaver [1970] A.C.1, 14 ("the fruits of insurance which the plaintiff himself has provided" and "the fruits of the benevolence of third parties") as "apparent exceptions to the rule against double recovery" founded on the special considerations of policy which Lord Reid had explained: see Lord Bridge of Harwich, at p. 358. The House declined to create another exception for the case in which, as in Donnelly v. Joyce* [*[1974] Q.B. 454*](http://www.bailii.org/ew/cases/EWCA/Civ/1973/2.html)*, the plaintiff claims compensation for the reasonable cost of necessary services which have in fact been provided voluntarily by a third party. It decided that in such a case damages cannot be recovered for the plaintiff's own benefit. He can sue only if he claims as trustee for the person who provided the services: see p. 363.*

*This case is of course far away from the gratuitous provision of services (usually by a relative) which was considered suitable for recovery as trustee in Hunt v. Severs* [*[1994] 2 A.C. 350*](http://www.bailii.org/uk/cases/UKHL/1994/4.html)*. If Mrs. Dimond is allowed to sue Mr Lovell as trustee for 1st Automotive, the effect will be to confer legal rights upon 1st Automotive by virtue of an agreement which the Act of 1974 has declared to be unenforceable. This would be contrary to the intention of the Act. The only way, therefore, in which Mrs Dimond could recover damages for the notional cost of hiring a car which she has actually had for free is if your Lordships were willing to create another exception to the rule against double recovery. I can see no basis for doing so. The policy of the Act of 1974 is to penalise 1st Automotive for not entering into a properly executed agreement. A consequence is often to confer a benefit upon the debtor, but that is a consequence rather than the primary purpose. There is no reason of policy why the law should insist that Mrs Dimond should be able to retain that benefit and make a double recovery rather than that it should reduce the liability of Mr. Lovell's insurers.*

19. The significance of this part of his speech is plain, in the context of comprehensive insurance: it establishes that in modern authority, the position of insurance and benevolence, are treated as anomalous exceptions, to a general rule against double recovery, and an emphasis on the primacy of the compensation principle in the assessment of damages, a trend identified by Harvey McGregor QC, nearly 50 years earlier[[7]](#footnote-7) in an article he wrote published in 1965.

20. In the conjoined cases reported as **Burdis.v.Livsey**[[8]](#footnote-8) the Court of Appeal made the following analysis of the nature of the loss incurred by hire charges, distinguishing between direct loss, which was subject to the principle of res inter alios acta, and potential future loss:

1. *By contrast, the hire charges which were sought to be recovered in Dimond represented a potential future loss, consequent upon the defendant’s tort, which was recoverable as damages only if and when it was in fact suffered. In the language of pleading, the hire charges constituted special damage. As Judge Harris put it in Seddon (at page 2890), in the passage quoted earlier, the hire charges are “of the essence of the damage which is consequential loss or special damage”. Hence in Dimond, because the credit hire agreement was unenforceable and the hire charges were accordingly irrecoverable from the claimant, the hire charges never formed part of the claimant’s loss.*
2. *The distinction between an immediate and direct loss on the one hand and a potential future loss on the other is of importance for present purposes because it leads to different treatment of benefits derived from a third party after the commission of the tort. In every case a claimant’s recoverable loss is limited to the loss which he has actually suffered - damages in the tort of negligence are, after all, “purely compensatory” (see per Lord Bridge in Hunt v Severs at page 357H) - but the process of determining, in the light of subsequent events, what loss the claimant has actually suffered differs according to whether the loss was suffered when the tort was committed (direct loss) or whether it was suffered subsequently (consequential loss).*
3. *In a case of direct loss, subsequent events will operate to reduce or extinguish the loss only in so far as such events are referable to the claimant’s duty to mitigate his loss, and hence referable in a causative sense to the commission of the tort (see British Westinghouse and The Elena D’Amico. In The Elena D’Amico, Robert Goff J said (at page 88, right hand column):*

*“[W]hat is alleged to constitute mitigation in law can only have that effect if there is a causative link between the wrong in respect of which damages are claimed and the action or inaction of the plaintiff.”*

1. *Robert Goff J went on to cite Viscount Haldane LC’s speech in British Westinghouse, describing it as a “classic statement of the principle of mitigation”.*
2. *The operation of this principle can also be seen in cases concerning breach of a covenant to repair contained in a lease (see, for example, Joyner v Weeks [1891] 2 QB 31 CA and Haviland v Long [1952] 2 QB 80 CA).*
3. *In our judgment, the authorities to which we have so far referred establish that subsequent events which are not referable in a causative sense to the commission of the tort, that is to say events which, on a true analysis, are collateral to the commission of the tort, or res inter alios acta, or too remote - we regard these expressions as interchangeable - do not affect the measure of a direct loss suffered when the tort was committed.*
4. *In the case of potential future losses, on the other hand, the general rule is that to the extent that such a loss is in fact avoided (for whatever reason) it is a loss which is never suffered and which is accordingly irrecoverable for that reason. In Hunt v Severs Lord Bridge, at page 361F, gave the example of an injured claimant who requires hospital treatment. Lord Bridge said:*

*“If an injured plaintiff is treated in hospital as a private patient he is entitled to recover the cost of that treatment. But if he receives free treatment under the National Health Service, his need has been met without cost to him and he cannot claim the cost of the treatment from the tortfeasor.”*

1. *We see that as an example of potential future damage, consequent on the tort, which in the event was never suffered. In that respect, it is in our judgment on all fours with the hire charges in Dimond.*
2. *There are two well-established exceptions to the general rule that potential future losses are irrecoverable if and to the extent that they are in fact avoided: these exceptions are identified in Parry v Cleaver and Hussain. In the latter case Lord Bridge said (at page 527G):*

*“But to the prima facie rule there are two well established exceptions. First, where a plaintiff recovers under an insurance policy for which he has paid the premiums, the insurance moneys are not deductible from damages payable by the tortfeasor: Bradburn v Great Western Railway Co (1864) LR 10 Ex 1. Secondly, when the plaintiff receives money from the benevolence of third parties prompted by sympathy for his misfortune, as in the case of a beneficiary from a disaster fund, the amount received is again to be disregarded: Redpath v Belfast and County Down Railway [1967] NI 147. In both these cases there is in one sense double recovery. If the award of damages adequately compensates the plaintiff, as it should, the additional amounts received from the insurer or from third party benevolence may be regarded as a net gain to the plaintiff resulting from his injury. But in both cases the common sense of the exceptions stares one in the face. It may be summed up in the rhetorical question: ‘Why should the tortfeasor derive any benefit, in the one case, from the premiums which the plaintiff has paid to insure himself against some contingency, however caused, in the other case, from the money provided by the third party with the sole intention of benefiting the injured plaintiff?’”*

1. *However, since in our judgment repair costs are merely the measure of a direct loss, suffered when the tort was committed, and are not to be regarded as falling within the category of potential future losses claimable as special damage, the general rule identified in Lord Bridge’s example in Hunt v Severs, and the exceptions to that general rule to which we have just referred, are of no materiality for present purposes.*

21. For the purposes of the argument noted above, these passages might be thought to be useful for both sides of the argument: noting that hire charges are not a species of “direct loss” but rather a future loss, hence indicating that the doctrine of res inter alios acta can apply, but only within the familiar limits noted above. Secondly, noting the application of the principle in **Parry.v.Cleaver**, to this species, of future loss it permits claimants to argue that the principle of res inter alios acta does apply. But that in turn, begs the question of what that principle can be accurately summarised to be?

22. **Bee.v.Jenson**[[9]](#footnote-9) is an interesting case, because it concerned both a hire car, provided to a victim, under a pre-existing insurance policy, and issues involving the recovery of the costs of the hire car to the insurer. For our purposes, the decision is significant for this summation of the position at law, regarding insurance benefits:

*So far in deference to the appellant's skeleton argument, I have referred to Mr Bee and his insurers interchangeably as if they were both making the claim for the recovery of the hire charges. In fact this is inaccurate. In English law the claim is only made and can only be made by Mr Bee, see MacGillivray, Insurance Law 10th Edition paras. 22-44 to 22-47. His insurance arrangements would normally be said to be irrelevant to the tortfeasor's liability. They are as is sometimes said "behind the curtain". The reality is nevertheless that the claim for the hire charges is a subrogated claim brought by Mr Bee for the benefit of his insurers. The insured himself, although the actual claimant, has not himself paid the repair bill for his car nor has he paid the hire charges; nor indeed has he paid the cost of litigating against Mr Jenson but it is no defence for Mr Jenson (or his insurers) to say that Mr Bee, because he has been compensated by his insurers, has himself suffered no loss. Ever since Bradburn v Great Western Railway (1874) LR 10 Ex. 1 defendants have had to accept that a claimant's insurance arrangements are irrelevant and cannot be prayed in aid to reduce their liabilities. A corollary of the rule that only the insured can sue in respect of the loss is that a defendant can only discharge his liability by paying the insured. If, however, the insured has already been indemnified by his insurers, he will hold his recovery on trust for his insurers. These provisions of common law are all reflected in Note 6 to Section H of Mr Bee's policy.*

It might be thought that this statement is too broad: certainly benefits paid under insurance policies might not be taken into account, to reduce a tortfeasor’s liability: but that does not mean that insurance arrangements are “behind the curtain” in all respects. Indeed in that case, the insurance arrangements established what the quantum of subrogated loss was.

23. The later case of **Copley.v.Lawn**[[10]](#footnote-10) is also significant in two respects. First, because Longmore LJ, plainly did not agree with the distinction between past and future loss, though his comments on this consideration were arguably obiter dicta at paragraph 31:

*Judge Langan thought that offers in kind or, as he called them, offers of "restitutio in integrum" were different from cash offers. But, as I have sought to show with the assistance of Strutt v Whitnell, it would be odd if that were so. Mr Walker sought to support this distinction by drawing a further distinction between cases where loss had already been incurred (when as I understood him he would accept that it would be illogical to draw a distinction between offers in cash and offers to restore the original position) and cases where the loss was only to be incurred in the future (when such a distinction would be appropriate). Quite apart from the unattractive artificiality of this double distinction, it seems to me to fall down as a matter of law. The loss of use (although prospective) was a genuine loss at the time of the accident. The cause of action for loss of use accrued then, although it would no doubt be correct to say that any claim was not then quantifiable, see Dimond v Lovell, supra, p 406 G-H and Bee v Jenson [2007] 4 A ER 791, para 15. Moreover in Mrs Copley's case her car was already under repair and she had already made the agreement with Helphire when she received KGM's offer, so that on any view her loss had already begun to be incurred. In these circumstances Mr Walker's attempt to support Judge Langan's distinction between offers in cash and offers of restitution is misconceived.*

24. Secondly, the case is perhaps more significant, for the approach taken to the role or existence of insurers and their significance for exploring questions of mitigation of loss. In particular, it was noted that in the context of that case (offers by insurance companies to provide substitute cars) it was right to pierce the veil, and take into account the existence of insurance arrangements:

1. *At this stage it may become important to decide the extent to which (if at all) it is right to take account of the fact that both parties are insured. The traditional English view is that insurance is left out of account in ascertaining the parties' rights. That is why, although these appeals are in truth disputes between insurers the formal position is that it is only the insureds who are parties to the actions before the courts.*
2. *On the traditional view of the matter, one would look only at Mrs Copley's and Captain Maden's personal position. One would ask whether Mrs Copley acted reasonably when on 28th November she received KGM's letter of 24th November. She (as anyone else would) passed it immediately to her solicitors and left them to deal with it. On no view could she personally be said to have acted unreasonably in doing as she did and awaiting their advice. The fact that that advice never came was not the fault of Mrs Copley. Deputy District Judge Reed held that Mrs Copley should, on receipt on KGM's letter, have accepted KGM's offer and cancelled the agreement she already had with Helphire. If one is looking at the matter solely from Mrs Copley's view, I can only disagree. It is positively unreasonable to expect Mrs Copley to take the initiative, without advice, of cancelling an agreement she has already made just so that she can get a different "free" car from the "free" car she already has. It may well be that the deputy district judge and Judge Langan were effectively conflating the position of Mrs Copley and her solicitors and deciding that Mrs Copley's solicitors should have advised her to take the defendant's offer of a free replacement car and the question whether it is right to look at it in that way will have to be addressed.*
3. *Captain Maden's position is somewhat different because District Judge Flanagan's finding was that he ignored KGM's letter. Moreover, when he came to sign the Helphire agreement forms on 18th August he omitted to tick a box in which he was specifically asked if he had been offered a replacement car by the defendant or his insurers. The District Judge then held that Captain Maden ought not to have ignored the KGM offer but should have picked up the telephone to KGM and asked what car was available and when it would be available. Significantly the judge did not hold that Captain Maden should have at once accepted the offer. But he said that he should have "actioned the offer that was put to him". I would not myself have come to that conclusion; why should Captain Maden enter into negotiations with the representatives of the defendant who damaged his own car with a view to clarifying their offer when he had every expectation (correctly) that he would be able to obtain a "free" car anyway? Why indeed should an innocent car driver be forced to react at all to a complicated letter sent on behalf of a defendant just a day after that defendant has negligently damaged his vehicle?*
4. *In fact the record shows (pages 73-76) that Captain Maden's evidence was that he had sent KGM's letter to his own brokers or insurers (described as SAGA). That was never challenged by counsel for Mr Haller and his insurers and it is a bit of a mystery why the District Judge held that Captain Maden ignored it. The answer must be that, like Deputy District Judge Reed in the case of Mrs Copley and her solicitor, he was conflating the position of Captain Maden and his brokers and the question is whether that was the right approach.*
5. *The answer is that in most cases that will be the right approach because the natural assumption will be that any individual driver will send any letter similar to KGM's letter to his own agents whether they be his solicitors or his brokers or his insurers. It is therefore appropriate to consider the combined position of the claimants and their advisers and, if that is what the judges below did, they were right to do so.*
6. *This conclusion carries with it an important consequence. If it is right to take into account the fact that insurers on both sides are involved (as is explicit in relation to the defendants and implicit in relation to the claimants), any offer made by the defendants' insurers must contain all such information as will be relevant for the claimants and their advisers or representatives to make a reasonable response. One piece of information missing from KGM's letter was the cost to KGM of hiring the cars. Whereas it might be said that that would be of no interest to Mrs Copley and Captain Maden as individuals, it would undoubtedly be of great interest to their advisers or representatives, since, if KGM could genuinely obtain hire cars more cheaply than the claimants could, it might be unreasonable to use the services of Helphire and a mitigation argument might get off the ground.*

The significance of this approach, is that it indicates that a broad notion that insurance arrangements are always res inter alios acta, is far too wide.

25. The argument has been directly addressed in the oft cited decision in the Poole County Court of **Rose.v.The Co-operative Group**[[11]](#footnote-11)which surveyed other County Court decisions[[12]](#footnote-12) however, a careful reading of the transcript of this judgment, indicates that the decision in **Parry.v.Cleaver**, was not subject to a rigorous analysis, and was given a wide application.

26. The decision of the judge in this case is not binding, but has often been cited as determinative, in pursuance of that peculiar tradition in County Court litigation that unimportant decisions become important because parties give them undue deference.

27. The scope of the insurance exception was more fully argued in **W.v.Veolia Environmental Services (UK plc)**[[13]](#footnote-13) but in a different context: to argue that even if the subrogated claim sought to be brought in that case was not subrogated, a payment by a party to a victim of a wrong with the intention of not reducing the victim’s claim against the defendant was properly to be left out of account.[[14]](#footnote-14) The question as whether the option to use a comprehensive insurance policy or not, was a factor properly to be taken into account, was not in issue at all.

28. Certain decisions of the Northern Irish courts[[15]](#footnote-15) have also accepted a broad application of the principle of res inter alios acta, but are vulnerable to the same criticisms. So whither English law?

**The position in the United States of America**

29. The position in the USA, presents a fascinating contrast to the position in English law. Leaving aside certain commentators, who wish for philosophical reasons to abolish fault based liability altogether[[16]](#footnote-16), no fewer than 44 out of 50 states have enacted legislation which permits courts to take into account the payment of collateral source benefits: thus reversing by legislation the common-law rule best expressed in England by the rule in **Parry.v.Cleaver** and which had been part of American law since 1854[[17]](#footnote-17). The enactment of such legislation can be traced in many cases, to the representations of powerful lobbying by insurance companies and the medical defence organisations.

**Conclusions**

30. The above discussion indicates that the principle in Parry.v.Cleaver can be given a wide application or a narrow application. To date, it has been assumed that a wide application prevails.

31. A narrow application would favour the arguments of road traffic liability insurers, seeking to argue in many cases, that where a claimant fails to utilise a comprehensive insurance policy and elects for a credit hire vehicle, there has been a failure to mitigate loss, as by the claimant’s actions (or rather omission) a small loss will increase to a large loss.

32. Road traffic liability insurers, can point to the fact that they remain liable on a subrogated basis, to reimburse the claimant, who then holds the sums on trust for his own insurers, and they are not “reducing” the direct liability they owe, merely preventing a further liability from accruing. Whether this point will be taken and argued to appeal, remains one of the more interesting issues in credit hire.

1. Barrister at law, 24 The Ropewalk, Nottingham, NG1 5EF (0115) 947 2581 [andrewhogan@ropewalk.co.uk](mailto:andrewhogan@ropewalk.co.uk) [↑](#footnote-ref-1)
2. (1874-75) L R 10 Ex 1 [↑](#footnote-ref-2)
3. [1950] 2 K B 43 [↑](#footnote-ref-3)
4. [1970] 1 AC 1 [↑](#footnote-ref-4)
5. At page 14 [↑](#footnote-ref-5)
6. [2002] 1 AC 384 [↑](#footnote-ref-6)
7. See Compensation versus punishment in damages awards 28 Modern Law Review page 629 Harvey McGregor [↑](#footnote-ref-7)
8. [2003] QB 36 [↑](#footnote-ref-8)
9. [2007] EWCA Civ 923 [↑](#footnote-ref-9)
10. [2009] EWCA Civ 580 [↑](#footnote-ref-10)
11. 7th February 2005 HH Judge Meston QC [↑](#footnote-ref-11)
12. There are other decisions to like effect, but this decision is the most widely recounted example. [↑](#footnote-ref-12)
13. [2011] EWHC 2020 [↑](#footnote-ref-13)
14. See for example paragraph 29 of the judgment of HH Judge Mackie QC [↑](#footnote-ref-14)
15. Eg Mcmullen.v.Gibney and Gibney [1999] NIQB 1 [↑](#footnote-ref-15)
16. For an interesting but extreme view see Personal Responsibility and the Law of Torts by Douglas H Cook American University Law Review volume 45: page 1245 et seq [↑](#footnote-ref-16)
17. See The Collateral Source Rule and its Abolition: An Economic Perspective by Marshall and Fitzgerald at page 56 [↑](#footnote-ref-17)