[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, JJ.]

IOANNIS HJI SOTERIOU,
Appellant-Defendant,

v.

IOANNIS SAVVA,
Respondent-Plaintiff.

(*Civil Appeal No.* 5058).

Negligence—Contributory negligence—"The doctrine of identification"—Collision of motor vehicles—Plaintiff's (respondent's) car driven by his son, the appellant (defendant) driving the other car—Neither pleaded nor proved by evidence that at the material time the son was driving the said car as his father's servant or agent or for his father's purpose—Said "doctrine of identification" cannot come into play—Even if the Court were to find that the son was negligent, it could not intervene and reduce the damages on the ground of contributory negligence.

"*The doctrine of identification*"—*See* supra.

Road traffic—Road accident—See supra.

The facts sufficiently appear in the judgment of the Court dismissing this appeal by the defendant in the action.

Cases referred to :

Hewitt v. *Bonvin and Another* [1940] 1 K.B. 188.

Appeal.

Appeal by defendant against the judgment of the District Court of Limassol (Michaelides, Ag. D.J.) dated the 29th February, 1972, (Action No. 1261/71) whereby he was adjudged to pay to the plaintiff the sum of £100.935 mils as damages caused to plaintiff's car due to the negligent driving of the defendant.

P. Cacoyiannis, for the appellant.

P. Pavlou, for the respondent.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P.: The appellant (defendant in the Court below) complains against the judgment given against him by the District Court of Limassol in an action for negligence arising out of a traffic collision which took place in Limassol on the 14th September, 1970.

Another part of this appeal relating to the quantum of damages has not been pursued and it is to be treated as abandoned ; we are, therefore, concerned only with the aspect of liability.

The main facts of the case are that on the date in question the appellant was driving his motor-car in Mishaoulis & Kavazoglou Street in Limassol, which is forty feet wide, and while he was approximately in the middle of the street and about to turn to his left into Sappho Street, which is a side-road, he collided with the motor-car of the respondent (the plaintiff in the Court below) which was being driven along Sappho Street by the son of the respondent, who was not in possession of a valid driving licence.

It has been found by the trial Court that it was the negligence of the appellant that caused the collision.

It was argued in this appeal, as it had, also, been pleaded before the Court below by the appellant, that the decisive cause of the collision was the negligence of the son of the respondent.

On the material before us we cannot say that the view that negligence on the part of the appellant was an effective cause of the collision was not warranted ; in fact, after his car had come momentarily to a halt prior to the approach of the car of the respondent, it was driven suddenly across the street with the result that the collision ensued.

The question whether the respondent's son has contributed, by any negligence on his part, to the collision cannot arise in this appeal, because, as it was neither pleaded nor has it been proved by evidence that, at the material time, the son of the respondent was driving his father's car as his servant or agent or for his parent's purposes, the "doctrine of identification"—as it is sometimes described in relation to the issue of contributory negligence, when the car of one person is driven by another (see *Hewitt* v. *Bonvin and Another* [1940] 1 K.B. 188, and Clerk and

Lindsell on Torts, 13th ed., p. 587, paragraph 995)—cannot, in any event, come into operation, in the present instance; so, we could not have intervened in order to reduce, on the ground of contributory negligence on the part of the son of the respondent, the amount of damages awarded against the appellant, even if we were to find that the respondent's son has been negligent.

In order, however, not to prejudice the outcome of any possible future proceedings, we have found it inappropriate to pronounce in this appeal on whether the son of the respondent was, at the time, negligent in any way and, if so, to what extent.

In the result, this appeal is dismissed with costs.

Appeal dismissed with costs.