



OUTER HOUSE, COURT OF SESSION

[2018] CSOH 70

A352/15

OPINION OF LADY CLARK OF CALTON

In the cause

CV

Pursuer

against

ZENITH INSURANCE PLC

Defenders

and

AC

Third party

Pursuer: No Appearance

Defenders: J G Thomson; BLM

Third party: Hanretty QC; BTO Solicitors

29 June 2018

Summary

[1] On 6 January 2013, the pursuer was a passenger in a Honda motor vehicle registered number J984 NLT which was driven by her partner, Ross Graham, who collided with a DAF XF heavy goods vehicle. As a result of the collision, Ross Graham (the deceased) sustained fatal injuries and the pursuer suffered very serious loss, injury and damage. The pursuer raised an action of damages against the defenders who are the insurers of the Honda

motor vehicle driven by the deceased concluding for 5 million pounds sterling with interest and expenses. Thereafter the defenders convened AC, who was the driver of a Ford Focus, as third party. I understood that insurers “stood behind” the third party. The pursuer and the defenders settled the claim by the pursuer, by offer and acceptance dated 7 August and 6 September 2017 for the sum of £3,300,000 sterling inclusive of interest. By interlocutor dated 12 September 2017, on the unopposed motions by the pursuer, the defenders were found liable to the pursuer for the taxed expenses of process and expert witnesses were certified.

[2] The dispute in the pleadings between the defenders and the third party was unresolved and following a procedure roll debate, a proof before answer was granted. The main issue focused at proof was the apportionment of liability and whether the award of damages and expenses payable to the pursuer should be apportioned between the defenders and the third party in terms of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940. There was no dispute about the reasonableness of the settlement and quantum or the lack of opposition by the defenders to the award of expenses and certification of witnesses.

The pleadings

[3] In answer 4, the defenders admitted that the deceased drove his vehicle on the B701 dual carriageway, on which there is a 40 mile per hour speed limit, towards a junction with the Clovenstone roundabout and collided with a heavy goods vehicle. The factual averments in relation to the actings of the third party are introduced at page 7 C – D of the closed record where it is averred:

“AC (hereinafter referred to as the Third Party) was travelling on the B701 in the inside lane having overtaken the deceased’s vehicle on the left, a manoeuvre commonly referred to as ‘undertaking’ and contrary to the Highway Code. The

Third Party was travelling at an excessive speed for the road and traffic conditions. On the approach to the roundabout, the deceased and the Third Party started racing each other. The probable cause of this being the undertaking manoeuvre of the Third Party alone or together with the admitted acceleration of the Third Party's vehicle as it approached the roundabout. In any event, the Third Party's manner of driving created a risk of injury to others, such as the Pursuer who was a passenger in the deceased's vehicle. The Third party admitted to the police officers investigating the incident that he had 'undertaken' the deceased's vehicle. Such a manoeuvre is likely to have been a significant distraction to the deceased as was his racing the deceased's vehicle thus resulting in the deceased misjudging the proximity of the Roundabout. His sudden burst of unnecessary acceleration to provide a 'thrill' was reckless and likely to have been a significant distraction to drivers of other vehicles, such as the deceased, either alone or together with undertaking manoeuvre. Accordingly, the Third Party's manner of driving caused or contributed to the deceased's vehicle colliding with the HGV. The Third party immediately left the scene of the accident and did not stop. Separately the deceased had taken cannabis sometime shortly prior to the accident..."

In response the third party admitted at page 10A – D the following:

"Admitted that the deceased had taken cannabis sometime shortly prior to the accident... Admitted that AC was travelling on the B701 in the inside lane. Quoad ultra the defenders' averments are denied except insofar as coinciding herewith. Explained and averred that the third party had been making his way home from playing football with friends at the Dunfermline Football Centre. He had taken his elderly father-in-law (he was then demonstrating a level of dementia) with him as a treat. His father-in-law had previously been a professional football player. On his approach to Clovenstone roundabout the third party accelerated briefly to provide a 'thrill' for his father-in-law. When he did so the carriageway in front of his vehicle was wholly clear. On his approach to the roundabout the third party slowed his vehicle and brought his vehicle to a halt at the roundabout under explanation that on approaching the roundabout he was aware of traffic thereon and in particular he had observed a heavy goods vehicle negotiating the roundabout. The third party was then aware of a screeching noise generated by tyres and the application of brakes. The deceased's vehicle had generated that noise in the latter stages of its approach to the roundabout."

[4] The defenders offered to prove that the loss, injury and damage was caused or materially contributed to by the fault and negligence of the third party based on the averments that the deceased and third party started racing each other caused by the undertaking manoeuvre of the third party alone or together with the admitted acceleration of the third party's vehicle as it approached the roundabout or in any event that the third

party's said manner of driving distracted the deceased and caused him to misjudge the proximity of the roundabout.

Agreed facts

[5] In addition to the admissions on record, the parties agreed for the purposes of proof the following facts which I consider to be relevant:

- “1. On 6 January 2013 at about 1.30 pm the pursuer was a front seat passenger in a Honda CRX motor vehicle, registration number J984 NLT.
2. The Honda was being driver by her partner, the defenders' insured, Ross Graham ('the deceased').
3. The Honda was being driven on the B701 Wester Hailes road in a south easterly direction.
4. The B701 is partly dual carriageway with a 40 mile per hour speed limit.
5. The B701 forms a junction with the Clovenstone Roundabout.
6. The third party was driving a Ford Focus, registration number A8 CEN.
7. The Ford was being driven on the B701 in a south easterly direction.
8. The third party undertook the deceased.
9. The third party accelerated his vehicle to provide a 'thrill' to his father-in-law who was a passenger in the vehicle.
10. The deceased failed to give way at the roundabout.
11. The Honda proceeded onto the roundabout and collided with a DAF XF, registration number SN12 FXH, heavy goods vehicle.
12. The DAF was being driven by Thomas Redpath from Berwick Upon Tweed to the North British Distillery on Wheatfield Road, Edinburgh.
13. The Honda became trapped underneath the trailer of the DAF.
14. The pursuer sustained injury in the accident. The pursuer's partner died in the accident.

...

26. That pages 97 to 127 of 7/5 is a Collision Investigation Report of the fatal injury road collision on 6 January 2013. The report was prepared by Police Constable Duncan Clark and Police Constable James Brunton and signed by them on 9 April 2013.
27. That 7/6 are two books of photographs showing inter alia the locus of the accident referred to on record. The photographs were taken by Police Constable James Brunton..."

[6] In addition, the joint minute referred to a number of police statements of various witnesses and it was agreed that the statement "forms part of the evidence and does not require to be spoken to". Parties were agreed that this was intended to incorporate the statements as evidence even if the witness was not called to give evidence as was the case for most of these individuals. The most important statement was the statement of Thomas Darren Redpath who was the driver of the heavy goods vehicle into which the deceased crashed the Honda car.

The map of the location

[7] The location of the accident is best shown on a map (41 of process) and the evidence of witnesses was taken by reference to this production.

Oral evidence

[8] Counsel for the defenders led three witnesses. The first witness was Christian Boorman, who witnessed events from her position as a driver of a car in close proximity to the Honda and Ford Focus cars. As this was the main witness on whom the defenders relied to found their case, I set out her evidence in some detail. The two other witnesses were AC (the third party) and PC Duncan Clark who spoke to a police investigation report. Counsel for the third party

led Michael Calder who was a pedestrian walking near the roundabout with his two children who witnessed events immediately leading up to the Honda crashing into the heavy goods vehicle.

Christian Boorman

[9] Christian Boorman (aged 63) is a qualified accountant who has held a driving licence for about 40 years and had never been involved in an accident. The locus was near her home and she was very familiar with the road layout including traffic lights and the roundabout. As she drove away from the last set of traffic lights before the roundabout, she drove past the slip road at a speed of some 30 miles per hour probably intending to increase her speed to 40 miles per hour. She was passed by a black car in the outside lane which stayed in the outside lane and then by a second black car which overtook her and moved back into the inside lane. It was not in dispute that her reference was to the deceased driving the car which stayed in the outside lane and the third party driving the car in the inside lane. The cars never left her sight. There was nothing about the manoeuvres which attracted her attention. The cars pulled away from her but she did not know their speed. The cars stayed in their respective lanes and appeared "side by side from my perspective". She could not remember the detail and she did not want to make things up. It was five years ago. She saw the cars ahead of her and thought that they should put their brakes on because the roundabout was ahead. She did not see brake lights. She expected the cars to slow down. She saw the car in the outside lane go under the wheels of the heavy goods vehicle which appeared from the right on the roundabout. She thought the car in the inside lane had gone left but she did not know if it had gone round the roundabout. She did not know if that car had braked. Neither car stopped at the roundabout. The car on the inside lane negotiated the roundabout somehow. The car in the outside lane

looked as if it went straight ahead without turning. She was unable to say whether both cars arrived at the roundabout at the same time. There were no cars between her and the other two cars. She stopped her car briefly on the grass verge before the roundabout and then negotiated the roundabout past the heavy goods vehicle. She stopped to check that the emergency services had been called. She talked to the driver of the heavy goods vehicle who was very shaken. She remembered saying to the driver that it was not his fault. She gave a statement to the police at the locus and a few days later a police officer came to the house and she told the police what had happened. She was very shocked at the time of the accident and did not know if her memory was better then, or after the event. She had no memory of what she told the police and she was surprised at a suggestion, put by way of a question, that she had said that the cars were racing. She had no idea what was going on in the minds of the drivers. She did remember thinking that the drivers should slow down as they got to the roundabout. Her recollection was that the cars were travelling faster than her, at the same sort of speed as each other, side by side. Her memory was that the second car drew level with the first car and that they both accelerated and travelled towards the roundabout. She did not feel as if she was in any danger as it was a clear stretch of road. She could not estimate the speed of the cars, except to say it was faster than her speed and she was travelling between 30 and 40 miles per hour. She did not see any red brake lights. In cross-examination she said she had first noticed the cars about 500 yards from the roundabout. The road has a slight uphill incline and there are bushes. At the time the cars reached the roundabout she was about 150 yards away. From her perspective they appeared to be side by side but she accepted that her perspective might be distorted. She accepted that the vehicle in the inside lane did not go into the path of the lorry. She could not account for the driver of the heavy goods vehicle seeing a car sitting at the roundabout in the inside lane before the collision. She accepted that there

were no other cars in the vicinity except for her car and the two other black cars. She could not explain where the car on the inside lane had gone. She was focused on the car crashing into the lorry. She did have a memory of the car on the left negotiating the roundabout before or after the impact. Her impression was that the car on the inside lane went left.

AC (the third party)

[10] The third party, aged 58, was driving home from a football game. His father-in-law, who has dementia, was a passenger in his car. The third party has lived near the locus for 31 years. There were three cars in a line stopped at the traffic lights at the health centre. He was in his Ford Focus and was the third car. The woman driving the first car went into the inside left lane. The second car stayed in the outside right lane. It was not in dispute that this was a reference to Christian Boorman and the deceased respectively. He overtook the first car and moved into the left lane. He accelerated and as his car has a turbo engine this gave a boost and his father-in-law loved that. He did it only when it was safe to do so for a few short seconds. He was in the left inside lane. He had no idea where the car was in the outside lane but he heard a noise from the car behind him. He accepted that he must have overtaken that car on the inside. His road ahead to the roundabout was clear. He saw the heavy goods vehicle, slowed down and stopped at the roundabout. During his driving he did not consider whether it might distract other road users. He was not paying attention to anything else. He was just doing his own thing. He stopped at the roundabout. The car in the outside right lane shot past him skidding into the barriers and proceeded forward and hit the heavy goods vehicle. He had been stationary at the roundabout for a few seconds before he heard the noise of the other car. The cars were alongside each other for a short time when he overtook and he then drove faster in the inside lane. He did not know what speed he was driving at. After the collision, he took

his father-in-law home and then phoned the police. He denied racing the car and confirmed that he stayed in the left hand lane after he had overtaken. In cross-examination, he explained his deceleration and braking manoeuvre and how he had heard a loud noise, possibly about half way to the roundabout from the traffic lights. After the accident he drove round the roundabout and went home.

PC Duncan Clark

[11] PC Duncan Clark, aged 34, is a traffic officer who joined the police in 2004. In 2013 he specialised in traffic investigations and prepared a report about the accident. He spoke to photographs and the map and stated that the distance from the last set of traffic lights to the Clovenstone Roundabout was 0.3 of a mile. He agreed stopping distances at various speeds with 53 metres at 50 miles per hour; 36 metres at 40 miles per hour and 73 metres at 60 miles per hour. He spoke to the marks on the road and the verge and confirmed that in his opinion there had been emergency braking by the deceased prior to the collision and noted that there were offside wheels marks on the central reservation. It was not possible to say when or where the brakes had been applied. In his opinion it appeared that the deceased's foot came off the brake when he hit the kerb probably because of impact but it was impossible to tell the reason. There were no mechanical defects in the car. During a search of the car a cannabis joint, which had been smoked was found in the driver's footwell and a cannabis grinder in the glove box. In the course of his police training he gained some experience in drug recognition and the effects of cannabis. In his experience, taking cannabis can slow down reactions to following instructions and can impair driving. In cross-examination he accepted that he was not holding himself out as a toxicology expert or forensic scientist.

Michael Calder

[12] Michael Calder, aged 35, said that he responded to a general police enquiry. His flat is located on the map in block 20 Harvesters Way, a short distance from Clovenstone Roundabout. He left the block with his two young daughters walking in the direction of the roundabout. He heard a loud noise coming from behind him. The loud noise cut out as gears were changed. The car was coming awfully fast towards the roundabout. It was in the outside lane and “swooshed” up the road. As a driver with 17 years’ experience he estimated the speed of the car at 50 to 60 miles per hour. From his position near the roundabout, he saw a heavy goods vehicle come off the slip road into the roundabout and he saw the car go under the heavy goods vehicle. He did not see any other cars. He did not see any brake lights come on. At this point he was on the bend at Harvesters Way. It fell quiet and there were no cars at all. Cars appeared about a minute later but there were no cars going past the accident locus. In cross-examination, he said that when he first turned and saw the car in the outside lane it was about four car lengths from the bus stop. He never saw any other cars before the collision.

Other evidence

[13] Thomas Darren Redpath, the driver of the heavy goods vehicle, said in his statement dated 9 January 2013:

“I have held my full car licence since 1988. In 1988 I passed my test for Class 2 HGV (C). I drove these for about 2 years and then in 2000 I passed my Class 1 (CE) and started driving artics for Laing of Bonchester. I have driven for various other local hauliers and I started with Simpsons about 5 years ago driving from Berwick-upon-Tweed to North British in Edinburgh delivering Malt. I work 4 days on 4 days off starting at either 4am or 6am usually doing 2 return journeys each day.

On Sunday, 6 January 2013 I started work at about half five/six o'clock (5.30 – 6.00 hours), and I made one return journey to North British and then I left Berwick with the second load at about 12 o'clock (12.00 hours). I drive the same route for every journey.

At the first roundabout you come to off the bypass (Wester Hailes Road and Clovenstone Road junction) I went onto it and started to drive around it towards my exit. I think the road surface was dry, although I can't be 100%. The traffic flow was quiet. There was hardly any cars at all. Because of the hedges I almost had to come to a halt before I went onto the roundabout. I was loaded with 20 tonne so as I went around the roundabout I would have been doing about 10-15mph at the most. As I passed the junction that the car that hit my trailer came from, I'm 90% sure that there was a dark coloured car waiting in the nearside lane. I could then see a silver grey car in the next junction that leads to the vets, the next junction was the one I was taking.

I then felt a slight jolt from the trailer as if I was going over a speed bump. I immediately looked in my nearside mirror, I saw nothing but the trailer. I looked in my offside mirror and could see a black bonnet of a car sticking out from under the trailer in front of axle 1 of the trailer which is a bulk tipper. I didn't hear the car or any skidding just a scraping noise. I think I would have travelled about 10 to 15 yards from feeling the jolt to stopping..."

[14] The joint minute referred to a number of additional statements but I was not invited by counsel for either party to take into account any of this evidence. I considered the statements but, with one exception, did not find the evidence of any assistance. The exception is a statement of Hazel Elizabeth Jarvis, aged 51. She was a passenger in her husband's car on Wester Hailes Road at a point before the last set of traffic lights. She was aware of a "sporty black boy racer type car" stopped at the lights in the left hand lane. When the lights changed to green "the black car shot off and made a lot of noise, it was the noise that drew my attention to it". Shortly after she saw the black car sticking out from under the heavy goods vehicle.

Submissions by counsel

[15] I am grateful to both counsel for their written submissions (42 and 43 of process) which they adopted in oral submissions and it is necessary only to give a brief summary.

For the defenders

[16] Counsel for the defenders sought an apportionment between the defenders and the third party of 60% to 40% respectively. He invited findings on four issues: whether the third party was travelling at excessive speed; were the deceased and the third party racing; did the undertaking manoeuvre and acceleration by the third party cause a distraction such that the deceased misjudged the proximity of the roundabout; and whether the third party's actions caused or contributed to the accident. He accepted that there were issues of reliability which required to be resolved, but he did not make any serious attempt to dispute the credibility of any of the witnesses including the third party. In relation to the third party, he appeared to be content to rely on the longstanding admissions by the third party that he had done a manoeuvre "undertaking" the deceased, that he had accelerated in the inside lane to give his father in law "a thrill" by a feeling of being pinned back in his seat and that he did not consider whether that might distract other road users. He relied primarily on the evidence of Christian Boorman that the vehicles driven by the deceased and the third party remained side by side as they were driven to the roundabout. He prayed in aid the evidence of the third party who accepted that he had "undertaken" and the evidence from Mr Calder who estimated the speed of the deceased at 50 to 60 miles per hour. He invited the court to draw an inference that the acceleration by the third party and the fact that the two cars, according to Christian Boorman, remained side by side provided indicators "that a race was on" and that both the third party and the deceased were travelling at excessive speed of 50 to 60 miles per hour. Further, the undertaking manoeuvre by the third party and his driving side by side at a relatively high speed, provided a distraction to the deceased which removed the deceased's attention from the roundabout where it should have been. Counsel accepted that even if the court found that there was participation in a race, that might not give rise to joint liability as a

matter of law. He submitted that conclusions required to be made by way of inferences. He invited me to accept Christian Boorman as an extremely careful and diligent witness in preference to the third party. PC Clark was not an appropriate expert to discuss the relevant effects of cannabis in this case. The third party should be found to have either instigated the race, or acted in a manner which distracted the deceased and on that basis liability should be apportioned to the third party. Reference was made to *Davis v Catto* 2012 REP LR 40; *Christina Vibert v Zenith Insurance Plc & Others* [2016] CSOH 96; *Hames v Furguson & Others* [2008] EWCA Civ 1268 and *Khanna v Inram Somra & Others* [2002] WL 31914831.

For the pursuers

[17] Counsel for the pursuers criticised the formulation of the duties of care made by the defenders. He submitted that on the evidence there was no form of agreement tacit or otherwise between the deceased and the third party and no evidence of “racing”. The evidence of Christian Boorman was inconsistent with the clear evidence of the third party and Thomas Redpath to the effect that before the collision, the third party had stopped and was waiting at the junction to the roundabout. In relation to the case of distraction, counsel submitted that there was no duty not to drive in a distracting way and there was nothing in the evidence to suggest or infer that the deceased was distracted in any way by the third party. There was nothing to explain why the deceased continued at speed despite the obvious hazard of a roundabout. In any event there was no evidence that anything was done by the third party that had any effect whatsoever upon the driving of the deceased.

Decision and reasons

[18] This proof was unusual because many of the essential facts were agreed on record and in the Joint Minute. I was invited by counsel for the defenders to accept the evidence of Christian Boorman and, to the extent it conflicted with the evidence of the third party, to prefer her evidence. The oral testimony given by the witnesses in court was given more than five years after the accident. I accept that all the witnesses who gave oral evidence were trying their best to tell the truth to assist the court.

[19] Parties agreed that the statement of Thomas Redpath should be taken as his evidence and as this was unchallenged at the proof, I accept this evidence which I summarised in paragraph [13]. There was no suggestion in this case that the driver of the heavy goods vehicle was in any way to blame and he gave clear information in his statement given, shortly after the accident, from an important vantage point. He was travelling very slowly and I considered it significant that he was "90% sure" that there was a dark coloured car waiting in the nearside lane as he drove round the roundabout. All the witnesses accepted that the road had very little traffic and in my opinion the identification of a waiting car in the nearside lane by Thomas Redpath, can only be a reference to the car driven by the third party in the context of the evidence which I considered. The evidence of Thomas Redpath supported the evidence of the third party who stated that he slowed down, brought his car to a halt and waited at the roundabout for a few seconds and that from behind him the car driven by the deceased was driven at speed past him into the heavy goods vehicle. I consider this evidence is very significant and it influenced my approach to the case. The distance from the last set of traffic lights to the Clovenstone roundabout was approximately one third of a mile. The driving time involved from a stationary position at the last set of lights before the roundabout to the collision therefore was very short. The third party undoubtedly overtook Christian Boorman who was

probably driving at the time of the overtaking manoeuvre at a speed below the speed limit of 40 miles per hour. The third party moved to the inside lane, accelerated and his speed probably increased quickly as he overtook on the inside the car driven by the deceased. On the evidence I am not able to conclude or infer whether he exceeded the speed limit for a very short time. In order to stop at the roundabout, as he did, the third party must have started braking some distance before the roundabout as he safely brought his car to a halt. It was only then that the third party became aware of a problem behind him in that there was a car being driven at speed towards the roundabout. I concluded that the cars driven by the third party and the deceased respectively were, for a very short time only, side by side. That must be so bearing in mind that the third party decreased his speed to a stopped position at the roundabout at a time when the deceased was driving from behind the third party at such a speed as to be unable to stop at the roundabout even when braking hard. The deceased, despite fierce braking evidenced by the tyre marks, entered the roundabout at speed unable to stop.

[20] Christian Boorman repeatedly emphasised that she could not estimate the speed of the cars and that she was speaking only to her impression in a situation where she was extremely distressed by the ultimate collision. I concluded that her recollection of the cars driving side by side up to the roundabout with no brake lights showing must be mistaken.

[21] Michael Calder estimated the speed of the car driven by the deceased as 50 to 60 miles per hour when the car was a short distance from the roundabout. He was unaware of any other cars around. I think it is significant that he saw only one car driven at excessive speed towards an obvious hazard, that is the roundabout. I am satisfied that he was mistaken in his recollection that there was no other cars because the car of the third party must have been approaching the roundabout, slowing down and then stopped at the roundabout. But the focus of Michael Calder was entirely on the car driven by the deceased for the reason I infer that the

deceased's driving was far too fast for the road conditions. I concluded that the car driven by the third party did not attract his attention because it was not being driven too fast and may have been at or close to a stationary position by the time he became a witness to events.

[22] The evidence given by PC Duncan Clark was not contentious as he properly accepted that he was not a toxicology expert or a forensic scientist. He did have some very limited experience and training in relation to the effects of cannabis and he accepted that taking cannabis can impair driving. I did not consider that he was in a position to assist the court about the defenders' averments in this case that the deceased had taken cannabis some time shortly prior to the accident and the effect that might have had on his driving.

[23] In my opinion there was no evidence in this case to support the defenders' averments that the deceased and the third party started racing each other whether by express or implied invitation. Counsel for the defenders accepted that there was no direct evidence to support this and that the case must be circumstantial and inferential. I cannot identify any evidence, which I accepted, from which to draw such an inference.

[24] The third party has always accepted that he had "undertaken" the deceased's vehicle on the road and that he accelerated to provide a "thrill". From the evidence of the third party, I note that he was concerned with his father in law but I accept that he was driving in an empty lane towards a roundabout and he was well able to bring his car to a stop before the roundabout without a problem. Even if the third party was careless in his driving, and I make no such finding, I am unable to identify anything in relation to his driving which caused or materially contributed to the collision. In my opinion the cause of the accident is entirely due to the excessive speed of the deceased and his failure to drive the car in such a way as to enable him to stop at the roundabout as he plainly should have done. There is no evidence in this case from which I could infer, that the deceased was in any way aware of, or influenced by the

driving of the third party. I note the evidence from Hazel Jarvis that the deceased appeared to be driving at speed at an earlier stage of his journey, before any manoeuvre by the third party. In my opinion, even if the deceased was aware of the driving and acceleration manoeuvre of the third party, none of that should have distracted a driver exercising reasonable care and cause such a driver to drive with excessive speed towards a roundabout which was obvious. In the evidence there is no explanation which I accept on the balance of probabilities as to why the deceased drove in the way in which he did. But one possible explanation is the admitted fact he had consumed cannabis albeit this was not explored in any detail in the evidence.

[25] For these reasons, the defenders' case against the third party must fail and I conclude that no apportionment is due under and in terms of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940.