

# What Liability for Trees and the Laws of Nature

Trees that overhang railway lines can be hazardous. Kevin Lee examines a recent court case that raises pertinent questions about whether a landowner should be 'an insurer of nature'.

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The recent case of Stagecoach South Western Trains Limited-v- (1) Hind (2) Steel [2014] EWHC 1891 (TCC) provides a comprehensive resume of the law as to a landowner's liability for trees on their land and raised important issues as to duty of care and proximity.

Rose Cottage is an attractive early Victorian house with a large garden adjacent to a railway line in Staines. Ms Hind, a primary school headmistress, had bought the property on 15 August 2001.

At one end of the garden the land narrowed into a triangular area that was uncultivated and covered with ivy, brambles and nettles. A 150-year old ash tree was located close to the point of the triangle.

The tree was hard up against a wooden fence and part of it overhung the railway. It consisted of three main stems.

Shortly after Ms Hind purchased the property, she employed a tree surgeon, Mr Holmes, to cut back trees and shrubs to let some light into the garden. This work cost around £2,000. However, Ms Hind was not happy with Mr Holmes' work and did not use him again. She felt that he had caused unnecessary damage to the trees. He may have done some work to the tree, but if so, it was not clear precisely what he had done.

In January 2006, Ms Hind engaged Mr Steel, the second defendant, to carry out some further work in the garden. She was given Mr Steel's details by his mother, who worked at Ms Hind's school.

A scope of work was agreed which included the cleaning out of the crown of the tree and the removal of deadwood. The total value of the work Mr Steel agreed to do was £725, plus £180 for the removal of vegetation.

At about 12:30am on 18 December 2009, one of the claimant's trains, travelling eastwards from Staines to Feltham, collided with a stem of the tree which had fallen onto the railway line from the garden of Rose Cottage. It caused £325,000 of damage to the train. The train company said it was the fault of Ms Hind and Mr Steel.

Both the railway company and Ms Hind were insured so, in truth; this was a battle as to whose insurers should bear the loss. Ms Hind was a keen and knowledgeable gardener and, it should be remembered, had previously undertaken work to the tree but the base was covered in ivy and she was quite unaware that the two remaining stems had pushed against each other causing a crack to develop and decay.

That decay had also spread from where the northern stem had broken off and the sapwood was exposed. The eastern stem had become rotten, but only broke off in very stormy and exceptionally wintry conditions.

It was claimed that the eastern stem, which was some 18 metres in height, was rotten and that Ms Hind should have appreciated that it was dangerous or, because it overhung the railway line, should have arranged for an expert arboriculturist to inspect the tree regularly to ensure it was safe.

Mr Justice Coulson, a very experienced Judge of the Technology and Construction Court undertook an impressive review of the law relating to responsibility for trees. This review summarised the principles relating to a landowner's duty in respect of trees as follows:

- a) The owner of a tree owes a duty to act as a reasonable and prudent landowner;
- b) Such a duty must not amount to an unreasonable burden or force the landowner to act as the insurer of nature. But he has a duty to act where there is a danger which is apparent to him and which he can see with his own eyes;
- c) A reasonable and prudent landowner should carry out preliminary/informal inspections or observations on a regular basis;
- d) In certain circumstances, the landowner should arrange for fuller inspections by arboriculturalists. This will usually be because preliminary/informal inspections or observations have revealed a potential problem although it could also arise because of a lack of knowledge or capacity on the part of the landowner to carry out preliminary & informal inspections. But a duty to arrange a close or formal inspection will only arise if there is some form of 'trigger' i.e. a warning sign. There is no duty to act where there is no apparent problem or danger; and

- e) The resources available to the householder may have a relevance to the way in which the duty is discharged.

The Court found that Ms Hind had limited resources and no obligation to have the tree regularly inspected by an arboriculturist, just because it was by a railway line. She was a keen gardener and had sufficient knowledge and experience to inspect it herself and she had done so spending considerable sums on tree surgery in her garden. There was nothing to put her on alert that the eastern stem was dangerous as the tree appeared healthy and she was not obliged to seek to inspect the trunk through all the ivy and nettles that surrounded it.

The Court also found that Ms Hind's tree contractor Mr Steel was not at fault. He was not an arboriculturist and he was only employed to carry out specific work and not to inspect the tree. He owed no duty of care to the claimant as his involvement had nothing to do with the safety of those using the railway. In any event, he had no reason to suspect anything was wrong and even an expert arboriculturist may well not have discovered the problem.

So the claim failed resoundingly and whilst this case did not establish any novel issues of law it provides an excellent summary of the law in what is becoming, a growing area. As Mr Justice Coulson said: *"I can see no basis in the authorities for the proposition that a reasonable and prudent landowner is obliged, as a matter of course and without any trigger or warning sign, to pay for an arboriculturalist to carry out periodic inspections of the trees on his or her land. In my view, that is coming far too close to making the landowner an insurer of nature. It is contrary to the principles of law."*

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