Anthony Phee v James Gordon & Niddry Castle Golf Club 4 November 2011

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Case Report: [2011] CSOH 181

Decision dated 4th November 2011

This was an Outer House case in the Court of Session (Lord Brailsford).

Facts: The claimant, Anthony Phee, was injured in the eye by a golf ball when he was playing golf on the Niddry Castle Golf Course. He sued both the person who struck the ball, James Gordon, and the Golf Club. Mr Phee was a very inexperienced golfer who was playing as a guest of a member of the Club, together with three companions. Mr Gordon was aware of Mr Phee and his companions when he struck the ball, but he was aiming in a direction well away from where the claimant was standing. After he struck the ball he realised it had veered away badly from where he was aiming and he shouted 'fore' but Mr Phee was struck in the eye. There was a discrepancy in the evidence about whether there had been more than one warning shout, and also whether Mr Phee ducked or remained standing, but the Judge said these discrepancies made no difference to his decision.

Decision: Lord Brailsford found both Mr Gordon and the Golf Club liable for the accident and attributed 70% liability to Mr Gordon and 30% liability to the Golf Club. He said that Mr Gordon, who was an experienced golfer, should have realised that there was a foreseeable risk of the ball encroaching on the area where Mr Phee was standing. The Golf Club had made no formal risk assessment of the golf course, although there had been informal discussions by the Committee about safety issues. The Judge said that they were partly to blame for the accident for their failure to place appropriate warning signs on the course. He did not think that there was any contributory negligence on the part of Mr Phee, whether or not he ducked when he heard the warning shout, as he had had very little time in which to respond.

The full report is available on the Scottish Courts Service website.