



Atkins -v- Scott (2008)



## Legal Case Study: Atkins -v- Scott (2008)

At about 1340 on 30 September 2004, Mr Albert Atkins (Claimant) was driving in the direction of Alton along the A32 in Hampshire near East Tisted, when a large branch from a mature oak (*Quercus robur*) tree fell hitting his vehicle and causing him serious injuries. The tree was in a field within the Rotherfield Estate owned by Sir James Scott (Defendant). The field was regularly used for local horse riding events and was subjected to a formal checking regime implemented by employees of the Estate.

The branch that failed had internal decay and a crack in its upper side, but it was held that none of these defects would have been visible from a ground-based visual check. The case was heard in the Aldershot & Farnham County Court and the judgment issued on 14 August 2008 in favour of the Defendant (Case No: 6KB04804).

The tree experts were Ian Murat (Claimant) and Jeremy Barrell (Defendant).

### Points of arboricultural interest:

- 1. Tree checks by employees with experience, but no formal qualifications:** The Defendant's trees were inspected regularly by employees who had decades of experience working on the Estate and managing trees, but they had no formal qualifications.

The two employees responsible for inspecting the trees gave evidence and it was held that they were sufficiently experienced and knowledgeable to identify serious hazards and know what to do about them if they were discovered.

- 2. Keeping formal records:** The Defendant did not have extensive formal records of the tree management regime that was operated, but the owner, employees and agents, gave evidence on this aspect and it was held that this was an adequate regime.

There is no legal requirement to keep formal records, but it can greatly assist in confirming that a regime is adequate if such records exist.

- 3. Expert disagreement on the orientation of the crack:** The branch that failed had a crack on one side about 80cm in length, which was discovered once the branch was on the ground after the failure. However, the experts disagreed on the orientation of the crack, i.e. at what angle it was facing when attached to the tree.

Unusually, this was resolved by lifting the fallen part of the branch and attaching it back to the tree with temporary ties to recreate a realistic representation of how it would have been oriented before the failure.

This reconstruction confirmed that the crack was facing upwards, and not downwards, which was an important consideration in the final conclusion that the crack would not have been discoverable from the ground-based quick visual check level of inspection.



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