regards "land of any tenure burdened with onerous covenants" and "unprofitable contracts" as different kinds of property. Mr. Wright, in his argument for the respondent, did not agree that a demise of land by deed for a term of years is within the term "land of any tenure." I think it is. In the early feudal age, what we now call a rent-paying tenant had no rights at all. But his estate in the land has long since been protected and it has long since been usual, and correct, to speak of leasehold tenure.

In subsection (4), the word "property" in the first line means the different kinds of property mentioned in subsection (1), and the subsection makes provisions about them, but also makes, towards the end, a further particular provision about contracts.

Skipping subsection (5) for the moment, one finds that subsection (6) starts off with provisions about all kinds of property, and ends with a proviso about property "of a leasehold nature," which can, if disclaimed, be vested in an underlessee and so on.

Now returning to subsection (5), it is concerned only with contracts made with the company. In my opinion, it cannot be interpreted as including a demise of land by deed for a term of years.

If I am correct, it follows, of course, that where a liquidator does not disclaim property of leasehold tenure, the lessor cannot apply by motion under this section for the rescission of the lease. He must allow the lease to continue, although the lessees are in liquidation. If asked why this should be so, I would say, perhaps because he is protected by his right of re-entry, and the law of landlord and tenant, but most of all because the legislature, whether for that or for some other reason, has not enabled him to. Of course, if circumstances exist or arise justifying forfeiture of the lease, the lessor can follow the normal procedure for its forfeiture, and, if it comes to an action in court, evidence can be called, and any application, if made, for relief against forfeiture can be considered.

In my opinion, the section did not enable the application of the respondent to be made, and consequently the court had no jurisdiction to entertain it or make any order under it. For these reasons I would allow the appeal, set aside the judgment appealed from, and enter judgment striking out the respondent's application.

[COURT OF APPEAL]

Freetown
Dec. 10,
1963.

SANTIGIE KAMARA . . . . . *Respondent*

v.

THOMAS DANIEL BULL . . . . . *Appellant*

Ames Ag.P.,
Dove-Edwin
J.A.,
Cole Ag.C.J.

[Civil Appeal 19/63]

Tort—Negligence—Negligent operation of automobile—Inevitable accident—Res ipsa loquitur—Burden of proof—Damages.

Plaintiff was standing on the pavement over a ditch beside the Freetown–Wellington road. Defendant drove his automobile past a stopped lorry on his right, struck and killed a third man, and then veered to the side of the road, striking the plaintiff and knocking him into the ditch. Plaintiff sustained severe injuries.

Plaintiff brought an action against defendant in the Supreme Court (Bankole Jones Ag.C.J.), which held that the doctrine of res ipsa loquitur was applicable, and, therefore, that defendant had to prove affirmatively that he had exercised all reasonable care in the circumstances. The court gave judgment for plaintiff, and defendant appealed.

Held, dismissing the appeal, (1) that the doctrine of res ipsa loquitur was applicable; and, therefore

(2) That the burden of proof shifted to defendant, who had to prove affirmatively that he had not been negligent; and

(3) That defendant had failed to make such proof.

Case referred to: *Turner* v. *National Coal Board* (1949) 65 T.L.R. 580.

John E. R. Candappa for the appellant.
Cyrus Rogers-Wright for the respondent.

DOVE-EDWIN J.A. on November 26, 1960, the plaintiff/respondent was injured by a motor car driven by the defendant/appellant and as a result of the injuries plaintiff received he was unconscious and was a patient in hospital for 77 days, after which he had to continue to receive medical attention for some time up to May 1961. In December 1962, he was examined by a surgical specialist, who found tender bony deformity of the right leg with about one-and-a-half-inch twisting of calf muscles and one-inch shortening of the leg. The surgeon found other injuries on the plaintiff/respondent, some of them by an X-ray.

As a result of this, on February 13, 1963, the plaintiff/respondent issued out a writ on the defendant/appellant claiming special and general damages.

His statement of claim specially indorsed upon the writ sets out the particulars generally, the particulars of his injury, his treatment in and out of hospital and the particulars of the special damages he claims.

At first no defence was filed but later by order of the court and by consent of the parties an interlocutory judgment dated March 8, 1963, in favour of the plaintiff was set aside and a defence ordered to be filed by March 23, 1963. On March 23, 1963, a defence was filed and a reply.

The trial started on April 25, 1963, and, after adjournments, was concluded on June 14, 1963. Judgment was given on July 3, 1963, and certified by the master and registrar on that date. Judgment was in favour of the plaintiff for £2,500 general damages and £401 5s. special damages, a total of £2,901 5s. Costs to be taxed.

Against this judgment the defendant/appellant has appealed to this court on eight grounds, and asks the court to set aside the judgment and dismiss plaintiff/respondent's claim.

Counsel for appellant in his opening speech in support of his appeal stressed the importance to his case of the statement of claim, particularly the particulars which he submitted were deliberately framed to bolster up a claim which was not supported by the facts. He submitted right through his argument that what was put forward to be negligence was nothing more than "inevitable accident"; that the particulars were so framed deliberately to hide this fact. He relied on the only eye-witness of the accident called by plaintiff, fourth witness in the case, by name Taiwo Langley, who he maintains supports his submission of inevitable accident.

The learned trial judge found that the principle of res ipsa loquitur applied and so the onus shifted onto the defendant to show that he was not negligent.

In his judgment the learned trial judge had this to say:

"I am satisfied on the evidence that the defendant's car left the road, went over the ditch and struck the plaintiff on the pavement, whereby he sustained his injuries which have just been described. The law as I apprehend it is that in such circumstances a presumption expressed in the phrase res ipsa loquitur is raised and the onus shifts to the defendant."

Then after the learned trial judge had reviewed the case and found that

"A man came out of the side-street, Maxwell Street, from which street ran a zebra-crossing into the main road. This man came jog-trotting across the road without using the pedestrian-crossing in order to get onto the transport lorry. The defendant's car coming at speed hit him about 10 yards past the stationary lorry. The striken man hit one of the four men over the ditch and the car continued and hit the plaintiff, who fell into the ditch. The defendant ultimately succeeded in wheeling his car back out into the main road before he came to a halt."

So that the judge found as a fact on the evidence that defendant's car hit the deceased man who in turn hit another man, not plaintiff/respondent, and then went on to hit the plaintiff. Plaintiff's wounds were clearly caused by the defendant/appellant's car hitting him and throwing him into a ditch.

In his defence it was the duty of the defendant to show that he was not negligent; this he failed to do.

The judge rejected the suggestion that this was "inevitable accident" and found on a balance of probabilities that the defendant was negligent. The defendant studiously avoided telling the court at what speed he was driving. The suggestion by counsel for appellant that appellant lost his nerve as a result of the intervention of the deceased man, Lamina Bangura, is not borne out by the evidence of the defendant himself, who did not even mention in his evidence that his car at any time hit the plaintiff.

Numerous cases were cited by appellant and respondent. To apply the principle of res ipsa loquitur is to do no more than to shift the burden of proof. In the case of *Turner* v. *National Coal Board* (1949) 65 T.L.R. 580, it was shown quite clearly that all the defendant needed to show was that he personally was not negligent.

In this case the defendant/appellant has failed to do this. I agree with the learned trial judge that in the circumstances of the case he was negligent. As to the question of damages—£2,500 general damages seem high but I cannot find anything in the evidence that could make me say that the learned judge arrived at that figure on some wrong principle.

I would dismiss the appeal.