third party and his evidence was not challenged; further, there is no other evidence from which I could conclude differently. In *Passmore* v. *Vulcan Boiler & General Co.* (1936) 54 Ll.L.R. 92, du Parcq, then J., said that if the insured, as a matter of kindness, courtesy or charity, gave a lift to someone who happened to be on business of his own, he would think that the proper view was that the vehicle was then being used for a social purpose—in this case domestic purpose. I am not satisfied that, as a fact, the second defendant was not using the van for a domestic purpose and I also feel that the principle enunciated by du Parcq J. could be extended to a person who is using the vehicle within the competency of the policy—that is, with the permission of the insured.

I have already dealt with the amount which ought to have been claimed for the car. There is still outstanding the question of alternative transportation. In her evidence the plaintiff said that she secured a car from the day after the accident which she kept till August 4, 1960, at £3 10s. 0d. a day. This was not disputed. From July 1 to August 4 inclusive are 35 days; at £3 10s. 0d. a day this amounts to £122 10s. 0d. I grant this amount was spent to provide alternative transportation; for pain and shock I allow £20. I am satisfied that the second defendant was negligent and that the accident was a result of his negligence. I find for the plaintiff and I allow £225 17s. 0d. for the value of the car; £122 10s. 0d. for provision of alternative transportation; £20 for pain and shock. As it is the insured's car that occasioned the damage to plaintiff's car and the pain and shock to plaintiff I order that the assurance company are liable to indemnify the insured without prejudice to their right to any claim they could bring against the second defendant. Costs for the plaintiff.

Freetown
Sept. 16,
1963

S. C. W. Betts J.

[SUPREME COURT]

HANNAH E. GRANT, ADMINISTRATRIX OF THE ESTATE OF WILLIAM M. GRANT, DECEASED . . . . . *Plaintiff*

v.

KARIM LAWRENCE . . . . . *Defendant*

[C.C. 34/62]

Tort—Negligence—Pedestrian struck by automobile—Speed of automobile—Damages.

Fatal Accidents Act, 1846 (9 & 10 *Vict. c.* 93)—*Fatal Accidents Act*, 1864 (27 & 28 *Vict. c.* 95)—*Law Reform (Miscellaneous Provisions) Act* (*Cap.* 19, *Laws of Sierra Leone*, 1960)—*Fatal Accidents (Damages) Act*, 1961 (*No.* 58 *of* 1961).

On May 21, 1961, William M. Grant (the deceased) was struck on Westmoreland Street, Freetown, by an automobile driven by the defendant. The deceased died on May 27, and the administratrix of his estate brought suit against the defendant under the Fatal Accidents Acts, 1846 to 1961, and the Law Reform (Miscellaneous Provisions) Act on behalf of herself and deceased's other dependants. At the trial, there was some conflict in the testimony, particularly regarding the speed of defendant's car.

Held, for the plaintiff, "I am satisfied that the plaintiff has sufficiently established the negligence of the defendant in relation to his driving, and I see no evidence of contributory negligence on the part of the deceased. There is sufficient evidence, even in the case for the defence, to establish that the deceased had made sufficient progress into the main road for him to have been seen by the driver of any oncoming vehicle, who, if he had been driving at a reasonable speed, could have averted the accident . . . even if there was a failure by the deceased to turn to the right to check for traffic it would not amount to negligence on his part as he had made sufficient advance into the main road to make such a precaution unnecessary."

Cases referred to: *Knight* v. *Sampson* [1938] 3 All E.R. 309; *Chisholm* v. *London Passenger Transport Board* [1939] 1 K.B. 426; *Bailey* v. *Geddes* [1938] 1 K.B. 156.

Cyrus Rogers-Wright for the plaintiff.
Edward J. McCormack for the defendant.

BETTS J. As administratrix of the estate of William Michael Grant, the plaintiff claims for herself and other dependants under the Fatal Accidents Acts, 1846–1961, and the Law Reform (Miscellaneous Provisions) Act (Cap. 19) for damages for the negligent driving of the defendant as a result of which William Michael Grant died. The accident took place on May 21, 1961, and the death occurred on May 27 of the same year. The defendant, apart from admitting that he was the driver of car C.2686 on May 21, 1961, and that he collided with the deceased, who subsequently died of the injuries he sustained, denied that he was negligent. According to the defendant the deceased's negligence was that he suddenly and without warning and without looking to his right emerged from between two parked vehicles on the defendant's near-side and collided with the defendant's said motor car without giving the defendant any or any sufficient opportunity of avoiding the said accident.

In support of the defendant's case, counsel cited the case of *Knight* v. *Sampson* [1938] 3 All E.R. 309, in which the defendant's car, proceeding at a *proper speed*, was approaching a pedestrian crossing and was within a foot or two of the crossing when the plaintiff, who up to then had not shown by his demeanour that he was about to cross the road, suddenly stepped upon the crossing and was struck and injured by the defendant's car. It was held that there was no negligence and no breach of the regulations respecting pedestrian crossings, and the plaintiff could not recover. The second part of the finding would, of course, not apply in this case. The relevant portion is that part of the finding dealing with no negligence. The similarity it is intended to point out is the sudden entry on to the main road. Also cited was the case of *Chisholm* v. *London Passenger Transport Board* [1939] 1 K.B. 426, in which it was decided that if a car is within a very short distance of the crossing, proceeding "at a proper speed," then it can be pleaded that the pedestrian started suddenly to cross the road, and that his actions, being quite unexpected by the motorist, were the real cause of his injury. The counsel for the defendant also referred to the Highway Code, which has the effect of law. Under Rule 6, Part I, the deceased was obliged to keep a proper look-out.

The authorities cited have to be related to the particular circumstances in this case; and the phrase "at a proper speed" used explicitly in one and implicitly in another should be given its due significance. There is no question that the vehicle C.2686 was at the time of the accident in about the heart of

the city, a built-up area for which there is a speed limit of 25 m.p.h. With regard to the question of speed, the evidence of the second witness for the plaintiff, Dr. Pratt, which was not contradicted, ran as follows:

> "The car came round the turn with a squeal of tyres and I was just about alighting from my car which had pulled up in front of Hakims and as the car approached me it developed a considerable speed. I came out and turned to watch the progress of the car. The speed was so great I was alarmed."

The third witness for the plaintiff said:

> "Immediately before the accident took place I saw a car which later I knew was driven by the defendant. The speed was abnormally fast."

As against these statements as to speed, the defendant says:

> "This man came from between two of the stationery cars in front of the church and could have wanted to catch the waiting bus. It (the car) was doing about 20–25 m.p.h."

The second defence witness said:

> "I feel the car was coming with the normal speed for town area and before it hit the man it swerved a bit."

The third defence witness said:

> "Where a driver brakes within 56 feet on a normal driving act, he must have been driving between 40–50 m.p.h."

He went on to say:

> "For an ordinary man to be thrown 6 feet 5 inches suggests that the car must have been travelling at some speed."

A point of immense interest is the evidence of the second defence witness when he said:

> "The car was not in view when the first lot of people crossed the road; in about five or six seconds when the second lot attempted to cross and some people stopped I had seen the car."

He went on to say:

> "I now say I first saw the car when it had reached Howe Street."

One has an undisturbed view between A. Genet's Store and Gloucester Street, looking south to north, and perhaps some distance beyond. If the car was travelling at 25 m.p.h. it should do about 220 feet in six seconds and granting that the second defence witness was in front of A. Genet's Store, he could have seen at least as far as Barclays Bank, which, from his point of vision, was well over 300 feet away. The car was not visible when the first lot of people came out of the cathedral, but in five or six seconds the car had not only appeared but was already at the junction of Howe and Westmoreland Streets. To achieve this the vehicle must have been going at a fantastic speed. On this alone, apart from the evidence of plaintiff's second and third witnesses and the third defence witness, the only conclusion it is possible to arrive at is that the car was going appreciably more than 25 m.p.h. This certainly does not seem to fall within what the phrase "at a proper speed" means. Perhaps the dissimilarity could be better deduced from the facts of the already cited case of *Knight* v. *Sampson*:

"Captain Knight was struck by the near-side mudguard 12 inches from the front and was thrown to the ground. That she was not travelling at anything like an excessive rate of speed appears from the fact that she was able to pull up with Captain Knight's body lying in the road opposite her car, opposite her as she sat. That is her recollection, which I think I can trust, and that really disposes of this case."

Can the same be said of this particular case? I venture to say, "No." The report of injury to the deceased was that it was serious.

The defendant denies that there was negligence on his part and asserts it was the deceased who was negligent. Again I have to refer to the evidence of the plaintiff's second witness when he said:

"It (that is, the car) weaved in a zigzag manner to avoid these children but eventually collided with a man on the left-hand side of the road directly in front of the church."

The impression is created that the accident took place as a result of the meandering course followed by the car. The evidence of Labour, the plaintiff's third witness, makes the position clearer. He says:

"As people were crossing towards Odeon the car swerved to its own left; when it was righting its position the car hit the deceased; at the time the car picked him up he had come to the main road and was about three feet from the gutter."

The defence, however, endeavoured to create a completely different picture. The defendant said:

"The road was clear up to that junction when suddenly I saw a man attempting to dash across in front of me. I tried to avoid colliding with him by turning sharply towards the right. As I got to the limit of the space open to me I collided with Mr. Grant. He fell near the gutter on the left-hand side. He collided with the left mudguard of the car I was driving. I did not see the man. There were three cars but nobody was in the middle of the road."

Before going on to the evidence of the second defence witness as to his account of the accident I am compelled to make some observations on this piece of evidence which tend to discredit it. The defendant says:

"The road was clear up to that junction when suddenly I saw a man attempting to dash across the road in front of me. I tried to avoid colliding with him by turning sharply towards the right."

But he went on to say: "I did not see the man." If he did not see the man, how was he trying to avoid colliding with him? Again he said:

"I tried to avoid colliding with him by turning sharply towards the right. As I got to the limit of the space open to me I collided with Mr. Grant."

What I want to stress are the words "limit of the space open to me." He had turned sharply towards the right and according to him, the defendant, there was nobody on the middle of the road. The question now is, how could he have come to the limit of space when there was nothing to prevent him going further? It seems to me that the defendant either was not paying sufficient

attention and could not give an account of the commencement of the accident or he is deliberately trying to avoid responsibility. The second defence witness said:

> "Among this batch there was a man who was later known by the name of Mr. Grant. He gave his attention to the bus; he walked into the road. As soon as he walked into the road, a car, C.2686, was coming from west to east of Westmoreland Street. The car picked this man up. He fell about the centre of the road. His feet turning towards the gutter on the church side."

This evidence leads to the understanding that the deceased had scarcely got to the main road when he moved almost immediately into the path of the vehicle. But on considering the answer of the same witness under cross-examination a rather different picture was evoked in relation to where the deceased was at the time of the accident. The witness said:

> "Mr. Grant stopped and tried to retrace his steps when he saw the car. He was hit before he had an opportunity to retrace."

This, of course, is an eloquent analysis of what took place. The deceased had made some appreciable progress on the main road when he noticed the approaching vehicle which bore down on him so swiftly that he had not time to retrace.

The last witness for the defence gave evidence which, to say the least, did not improve their case. Two points are of significant importance. He said:

> "Although the driver said he stopped 15 feet from the point of impact the point he showed as the stopping-point was 56 feet away from the point of impact."

The second point is his evidence: "The impact took place at the crown of the road." When asked under cross-examination what he meant by "crown of the road," he said: "By 'crown' I mean the middle of the road."

Sergeant Roberts is a defence witness, and his evidence, without showing any malice, has been unchallenged. I am satisfied that the plaintiff has sufficiently established the negligence of the defendant in relation to his driving, and I see no evidence of contributory negligence on the part of the deceased. There is sufficient evidence, even in the case for the defence, to establish that the deceased had made sufficient progress into the main road for him to have been seen by the driver of any oncoming vehicle, who, if he had been driving at a reasonable speed, could have averted the accident. I am of opinion that even if there was a failure by the deceased to turn to the right to check for traffic it would not amount to negligence on his part as he had made sufficient advance into the main road to make such a precaution unnecessary. I think this case falls within the ambit of the well-established principle as to negligence in the case of *Bailey* v. *Geddes* [1938] 1 K.B. 156.

The claim for damages, as already stated, is made pursuant to the Fatal Accident Acts, 1846–1961, and the Law Reform (Miscellaneous Provisions) Act. Under the former Acts it is necessary to supply a statement of particulars indicating the persons for whom the action is being brought and the nature of the claim in respect of which damages are sought. This was done. The name of Ola Tolbert does not appear and there apparently was some misconception about the relationship between the deceased and Patricia, Dalton and

Donald Grant. They are set down as children of the deceased but from the evidence it was revealed that they are the niece and nephews of the deceased. This discrepancy does not, however, disqualify them under the Fatal Accident Acts. The other claimants, apart from the widow, Matilda Grant and Ola Macfoy, fall also within the category. Ola Tolbert appears to be in a different position and I presume that it was on that account she was left out of the statement of particulars, and for the same reason I am not considering any claim on her behalf.

The deceased was 59¾ years old at the time of his death and was on the eve of retiring from the teaching profession in which his earnings were £480 per annum together with another £240—not questioned—which he gained from giving private lessons. I do not think it is really good sense to fix takings from private tuition at a particular figure. These takings, even under the best of conditions, are known to fluctuate. I think it is reasonable to assess it at £120—an amount which could be considered generous. From the extent of voluntary responsibility the deceased seemed to have been doing pretty well on about £600 a year. It is from this background I propose to make the awards. Patricia was 18 years old at the time of the accident and has now left school. She is about 20 years of age—a young woman. I award £3 a month from end of May 1962, until she is 21 years old. This, calculated to December 1964, is £96; the twins I grant £250 for both for five years; the mother £30 a year for two years; Ola Macfoy £100 for eight years; wife, £500, making a total of £2,706 and costs for the plaintiff against defendant. There will be no award for pain and suffering as deceased was unconscious from the date of the accident to the time of death.

[SUPREME COURT]

Freetown
Sept. 30,
1963
Cole Ag.C.J.

ALPHA KAMARA . . . . . *Appellant*

v.

S. A. T. KOROMA . . . . . *Respondent*

[Magistrate Appeal 53/63]

Criminal Summons brought by Private Individual—Larceny Act, 1916 (*Vol. I, Laws of Sierra Leone*, 1960, *p.* 212), *ss.* 1, 32 (1)—*Debtors Act* (*Cap.* 24, *Laws of Sierra Leone*, 1960), *s.* 35 (1)—*Courts* (*Appeals*) *Act*, 1960 (*No.* 18 *of* 1960), *s.* 4—*Whether appellant was "person aggrieved" by "decision of a magistrate"—Whether magistrate can refuse to commit accused person for trial before taking evidence—District Councils Act* (*Cap.* 79, *Laws of Sierra Leone*, 1960), *ss.* 5, 52 (1)—*Offences against Port Loko District Council—Whether appellant could institute criminal proceedings without authority from council—Constitution of Sierra Leone* (*P.N. No.* 78 *of* 1961, *Sch.* 2), *s.* 73.

Appellant brought a criminal summons against respondent charging him with certain offences against the Port Loko District Council contrary to sections 1 and 32 (1) of the Larceny Act, 1916, and section 35 (1) of the Debtors Act. The Police Magistrate held that the subject-matter of the summons was an "individual grievance" and, therefore, that criminal proceedings could be instituted only by the body aggrieved, i.e., the council or its duly authorised