Handwriting: This is done by persons acquainted with his handwriting either by seeing him write or from being in the habit of corresponding with him. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and such writing and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

Methods of proof: (1) By person having knowledge of it; (2) comparison; (3) expert; (4) presumption. This has not been done in the present case.

Identity of person whose handwriting is forged: Evidence must be given of the identity of the person whose handwriting is alleged to be forged, i.e., it must be proved expressly or from circumstances that the alleged forgery was intended to represent the handwriting of the person whose handwriting it is proved not to be.

The second count in the information is uttering. Uttering is the tendering of a document as genuine by a person who has forged it or knows it is a forgery. If there is no forgery there can be no uttering of a forged document.

Having shown that prosecution has not led evidence to establish that the will in Exhibit "A" is a forged document prosecution cannot support the second count in this information.

Accused having been delivered to you to see whether the information under which he is charged has been proved and, that not having been done, I now direct you to return a verdict of not guilty on both counts.

Freetown
July 5,
1963
Bankole Jones
Ag.C.J.

[SUPREME COURT]

SANTIGIE KAMARA . . . . . *Plaintiff*

v.

THOMAS DANIEL BULL . . . . . *Defendant*

[C.C. 55/63]

Tort—Negligent operation of automobile—Claim for pain, suffering and permanent disability—Res ipsa loquitur—Exercise of reasonable care by defendant—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.

Held, for the plaintiff, (1) 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:

(2) that defendant drove his automobile at an unreasonable speed, thus negligently causing plaintiff's injuries; and

(3) that plaintiff sustained general damages of £2,500 and special damages of £401 5s.

Note: The decision in this case was upheld by the Court of Appeal on December 10, 1963 (Civ.App. 19/63).

Case referred to: *Barkway* v. *South Wales Transport Co.* [1948] 2 All E.R. 460.

Cyrus Rogers-Wright for the plaintiff.
John E. R. Candappa for the defendant.

BANKOLE JONES AG.C.J. The plaintiff's claim against the defendant is for damages for pain and suffering and for grave injury and permanent disability suffered by him in consequence of the negligent driving of the defendant of his car C.683 on November 26, 1960, on the Freetown–Wellington road, Freetown.

The facts relied upon by the plaintiff are as follows: The plaintiff, with three other men, was standing on the Freetown–Wellington road over a ditch and on the "pavement" on the right-hand side of the main road leading towards Hastings Village. The plaintiff was waiting for transport to take him to the town of Yonibana in the Provinces where he lives. All four men were standing over the ditch and away from the main road when the defendant's car, without being noticed by the plaintiff, careered on to the ditch and over, hitting the plaintiff and felling him into the ditch in an unconscious state, in which state he was taken to hospital.

The medical evidence given by Mr. Olu Williams, a senior surgeon specialist, is to the following effect, namely, that he first saw the patient on November 28, 1960. He had a fracture of the cervical spine, a compound fracture of the right tibia and fibula. He was in severe pain and in grave danger of injury to his spinal cord in view of the cervical fracture. To quote his evidence the specialist said, inter alia:

> "The cervical fracture of the spine is what is known as a broken neck. I gave him scalp traction treatment for about three or four weeks. We had to put the patient to sleep during the treatment. The treatment consisted of boring two holes into his skull with callipers, etc. . . . The patient spent 77 days as an in-patient. During this period he suffered severe discomfort and for the earlier part of the period severe pain. I next saw patient professionally when he was referred to me for examination on December 19, 1962, and on December 21, 1962. I sent him for an X-ray on December 19. When I saw him on December 21 I had the X-ray film with me. On examination, the patient walked with a limp and there was tender bony deformation of right leg with about 1½ inches wasting of the calf muscles and an inch shortening of the leg. The neck movements were free and painless. The X-ray showed evidence of old fracture and displacement of third cervical spine with a bridge of bone connecting second and third spines. This is a mal-union which is permanent. X-ray of right leg showed healed fractured fibula and tibia with some overlapping. This accounts for the shortening of the leg.
>
> "My opinion is that the patient has been extremely lucky to survive in view of the site of the fractured cervical spine. The cervical injuries were grave. The shortening of the leg is permanent as well as the wasting of the calf. In view of the mal-union it is possible for patient to suffer some pain and stiffness of the neck. . . . I now see the patient before me (in court). There is some depression on the right temporal region. This constitutes a deformity which is permanent."

Under cross-examination the surgeon specialist said:

"I found the neck movement on second examination free and painless. When pain and stiffness occurs, these could reduce the mobility of the neck. . . . There is a functional disability with the neck, symptoms of which may be intermittent according to the pathology of the deformity—like arthritis. . . ."

On the date of the accident, an eye-witness to the facts, called as the only witness as such, was one of the four men standing on the "pavement" over the ditch. He first saw the defendant's car at a distance of about 200 yards away being driven fast. He saw the car drive past a stationary transport lorry on the defendant's right-hand side of the road. A man came out of a side-street, Maxwell Street, from which street ran a zebra-crossing into the main road. This man came out 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 stricken man hit one of the 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 into the main road before he came to a halt. The witness said that he kept his eyes on the car because it was being driven fast and approaching a bend. The first man who was hit by the car died. His name was Lamina Bangurah.

According to the defendant, he drove his car, which was in good running condition, along the Freetown–Wellington road on the date in question. I quote his evidence:

"When I got to the Wellington area and hard by Maxwell Street, I saw a stationary lorry on my right-hand side of the road. I passed it and about 30 yards before I got to Maxwell Street, a man came running out from Maxwell Street. I was then about 10 feet away from him. I swerved on to the right to avoid him. The man still kept on running. He fell on the bonnet together with a handbag he was carrying. He eventually fell on the right-hand side of the road into a ditch. I cut the car onto the left-hand side of the road and stopped it. I got out and came to the scene of the accident. I saw three men in the gutter. . . . It was not possible for me to have avoided the accident."

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 the 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. The position is clearly stated in the case of *Barkway* v. *South Wales Transport Co.* [1948] 2 All E.R. 460, 468, where Scott L.J., inter alia, said as follows:

"I agree that the mounting of the omnibus on the footpath was a fact which raised the presumption expressed in the phrase res ipsa loquitur. That phrase, however, represents nothing more than a prima facie presumption of fault. It is rebuttable by the same defence as is open to any defendant accused of negligence, against whom the plaintiff's evidence has made out a prima facie case. When the plaintiff has done that, the onus is said to shift to the defendant. In a case where res ipsa loquitur the onus starts on the defendant and requires him to prove affirmatively that he has

exercised all reasonable care, but that proof is very greatly facilitated if he can show that the event which caused the plaintiff damage happened through some cause for which no blame can attach to him, even though it cannot be specifically identified, and, if it can be so identified, his task is not only facilitated but achieved. If he thus succeeds in demonstrating positively the probable operation of such cause, whether specifically identifiable or not, the onus is then discharged, and the plaintiff is left in the position of having failed to prove his case. Even if he can point to no specific cause, he still discharges it if he can show that he used all reasonable care."

Applying this principle of the law to the present case, the defendant has to prove affirmatively that he exercised all reasonable care in the circumstances. I find it proved that the defendant was driving his car whilst approaching not only a pedestrian-crossing but a bend on the road in a manner which disabled him from safely stopping, if anything untoward happened. Whilst I concede that he might not have known that the stationary lorry was a passenger vehicle which would have called for extra care on his part, yet on his own admission he saw a man running across the road whilst he was 30 yards away from a side-street from which ran a pedestrian-crossing and not very far from a bend on the road itself. He has given no evidence of his speed at the time or how he came to hit the plaintiff, who was over the ditch. Rather, he gave the following, in my opinion, most damaging evidence under cross-examination. He said: "It was the man (not the plaintiff) that hit me by falling on my bonnet. I tried to avoid him but there was a collision. After the collision I was able to control my car," and in re-examination he said as well: "After the man (not the plaintiff) had fallen into the gutter I controlled the car by steering on to the left." The defendant is here saying that even after his "agony of the moment," according to him, when he could not help hitting the first man, he recovered control of his car and steered it, so to speak, out of harm's way. Yet a further accident occurred. His defence as to this further accident is one of inevitable accident. But do the facts bear out such a defence? I think not. The defendant has failed to show that in relation to the plaintiff, it was impossible for him to have avoided the collision with the man, Lamina Bangurah, whom he killed. He has failed to show that the effective cause of the accident to the plaintiff was due to the unavoidable and inevitable accident involving Lamina Bangurah. He has given no account as to how the plaintiff came by his injuries except that he could not have helped what happened.

It seems to me that the conclusion to be drawn from the evidence before this court is this, namely, that the defendant drove his car, in all the circumstances prevailing at the time, at an unwarrantable speed. He negligently knocked down the man, Lamina Bangurah, and thereafter negligently caused the accident complained of in this case.

Having so found the defendant responsible for the accident in which the plaintiff was involved, there now arises for my consideration the question of damages.

The plaintiff is a young man whose age was not given in evidence, possibly because he did not know it. At the time of the accident he was employed as a motor driver earning £15 per month. As a result of the accident, he became unemployed between November 1960, and November 1962, a period of 25 months. He would have earned the sum of £375. He paid the sum of £26 5s.

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for his medical examination and report to the surgeon specialist. The total of these sums, namely, £401 5s., constitutes the only special damages proved and which has not been disputed. As regards general damages, the plaintiff suffered serious injuries which are set out in the evidence of the senior surgeon specialist, and it is unnecessary for me to go through that evidence again or the treatment of the case and the pain and suffering undergone by the plaintiff as well as the permanent disabilities with which he has to go through life.

Now, notwithstanding the serious injuries and disabilities, the plaintiff has fortunately made a remarkable recovery and the medical findings are that he can carry out the normal functions of a man, without weight bearing on the head. He could also find employment. The plaintiff has decided to give up his vocation of motor driving because, among other things, he says he suffers from cramps on his right foot and intermittent pains on his neck. He has started farming on a small scale in his home-town. Taking into consideration the pain and discomfort suffered by the plaintiff and especially during the period of his stay as an in-patient in hospital and the permanent disabilities sustained, I think I will award the sum of £2,500. In the result the plaintiff is entitled to the following:

(a) General damages	... ...	£2,500 0s. 0d.
(b) Special damages	... ...	£401 5s. 0d.
		£2,901 5s. 0d.

The defendant is to pay the taxed costs of these proceedings.

Freetown
July 5,
1963

Bankole Jones Ag.C.J.

[SUPREME COURT]

CHARLIE INNISS AND GIFTY E. STEVENS . . . . . *Plaintiffs*

v.

AYODELE A. WRAY . . . . . *Defendant*

[C.C. 356/62]

Wills—Testamentary capacity—Burden of proof on party propounding will—Will prepared by nephew who took benefits—At most creates suspicion which must be removed by persons propounding will—Effect of burning of previous will by testator prior to execution of another will.

The testator made two wills while he was ill. The first was dated November 4, 1961, and the second January 10, 1962. The second will was prepared by the testator's nephew, who took benefits under it. Before executing the second will, he burnt the first, and later said with reference to it: "They think I am a fool. They went and drew up a will and no provision was made for my twin sister and my relations." The executors of the second will (the plaintiffs) sought to propound it in solemn form of law. The testator's widow (the defendant) objected to this will on the following grounds: (1) that the testator did not give instructions for its preparation; (2) that the testator neither read the will over to himself nor was it read or explained to him at the time