months' imprisonment or Le200 fine in respect of the so-called first count is set aside and the conviction quashed. I do not feel I can make an order for costs against the respondent who was the complainant in the court below because I am sure she merely made her complaint and assumed that the due process of law would be carried out. I do however order that Le10 deposited by the appellant for the cost of the records be repaid to him in full together with any other sum he may have deposited to abide the costs of appeal. I should make it clear that this decision does not affect the right of the respondent to take the proper steps to try to obtain payment under the affiliation order.

Order accordingly.

KAMARA *v.* GATEWAH and MACAULEY

SUPREME COURT (Dobbs, J.): January 31st, 1966
(Civil Case No. 127/65)

[1] **Civil Procedure—default of appearance—assessment of damages on default judgment—order for assessment by Master, if not drawn up, discharged by award at trial of action against co-defendant:** An order, which has not been drawn up, for the assessment of damages by the Master and Registrar against a defendant who has not appeared is discharged by an award of damages against him by the court at the trial of the action against his co-defendant who has appeared (page 377, lines 17–33).

[2] **Civil Procedure—judgments and orders—default judgment—assessment of damages—order for assessment by Master, if not drawn up, discharged by award at trial of action against co-defendant:** See [1] above.

[3] **Civil Procedure—judgments and orders—discharge of order before drawn up—order, not drawn up, for Master to assess damages against one defendant—order discharged by award against that defendant at trial of action against co-defendant:** See [1] above.

[4] **Road Traffic—negligence—damages—measure of damages—inconvenience—inconvenience of attending hospital, etc., included in general damages:** General damages for negligence in a motor accident case may include a sum for the inconvenience, arising from the accident, to which the plaintiff has been put, including inconvenience resulting from loss of use of the plaintiff's damaged vehicle and the inconvenience of attending hospital, making a statement to the police and the like (page 376, lines 16–22).

[5] **Road Traffic — negligence—damages—measure of damages—inconvenience—loss of use of damaged vehicle included in general damages:** See [4] above.

[6] **Road Traffic—negligence—duty of driver turning right to ensure road behind clear:** If a driver, intending to turn off a road into another road on the right, first veers to his extreme left, it is his duty to stop and make sure the road behind him is clear before he makes his right turn (page 375, lines 24–28; 34–38).

[7] **Tort—damages—measure of damages—torts affecting chattels—damage to chattel—recovery of replacement value requires evidence chattel rendered worthless:** To support a claim for the replacement value of property damaged in consequence of the defendant's negligence, there should be evidence not only of the cost of replacement but also that the article has become completely worthless (page 377, lines 1–4).

[8] **Tort—damages—measure of damages—torts affecting chattels—inconvenience a head of general damages for negligence:** See [4] above.

[9] **Tort—damages—measure of damages—torts affecting chattels—loss of chattel—proof of loss from plaintiff's person requires detailed evidence:** To support a claim for the value of property lost from the plaintiff's person in consequence of the negligent act of the defendant, evidence that the article was missing is not enough and there should be detailed evidence showing, for example, how securely it was carried, the time when its loss was discovered and the steps taken to ascertain what had become of it (page 376, lines 36–41).

[10] **Tort—damages—measure of damages—torts affecting chattels—inconvenience of loss of use of vehicle included in general damages for negligence:** See [4] above.

[11] **Tort—damages—measure of damages—torts affecting the person—inconvenience a head of general damages for negligence:** See [4] above.

[12] **Tort—damages—measure of damages—torts affecting the person—inconvenience of attending hospital, etc., included in general damages for negligence:** See [4] above.

[13] **Tort—negligence—damages—measure of damages—inconvenience a head of general damages where injury to person or property:** See [4] above.

[14] **Tort—negligence—damages—measure of damages—inconvenience—inconvenience of attending hospital, etc., included in general damages:** See [4] above.

[15] **Tort — negligence — damages—measure of damages—inconvenience —loss of use of damaged vehicle included in general damages:** See [4] above.

[16] Tort—negligence—damages—measure of damages—loss of chattel—proof of loss from plaintiff's person requires detailed evidence: See [9] above.

[17] Tort—negligence—damages—measure of damages—recovery of replacement value of damaged property requires evidence property rendered worthless: See [7] above.

[18] Tort—negligence—duty of driver turning right to ensure road behind clear: See [6] above.

The plaintiff brought an action in the Supreme Court against the defendants claiming general and special damages for negligent driving by the first defendant's employee, the second defendant.

The plaintiff was a pillion passenger on his own motor cycle, which was being driven by another man. In front of them was a bus driven by the second defendant, who was an employee of the first defendant, the owner of the bus. Approaching a road junction on the right, the second defendant drove to the extreme left of the road and the driver of the motor cycle proceeded to overtake the bus. Without pausing, the second defendant pulled over to the right to enter the junction. The motor cycle was already alongside the bus and the vehicles collided. The second defendant neither looked in his mirror nor gave a hand signal before making his right turn. It was not proved that he flashed his indicator or that the driver of the motor cycle sounded his horn. As a result of the collision, the plaintiff sustained injuries and had to attend hospital with consequential loss of earnings, his clothing was damaged and the motor cycle was damaged and sold for scrap. He claimed general damages and special damages for loss of earnings, damage to clothing and damage to the motor cycle, but not for loss of use of the motor cycle.

The second defendant did not enter an appearance and interlocutory judgment was signed against him. The court made an order for the assessment of damages against him by the Master and Registrar, but no formal order was drawn up and entered.

The defence was that the accident was caused solely by the negligence of the driver of the motor cycle, who was not joined as a defendant.

The plaintiff gave evidence of the replacement value of his damaged garments but did not say they had become completely worthless. He said he had had a wallet in his pocket containing money but he said nothing about the security of the pocket or that

the wallet was lost, when its loss was discovered or what steps were taken to ascertain what had become of it.

Rule construed:

Supreme Court Rules (Laws of Sierra Leone, 1960, *cap.* 7), O.X, r.6:

> "Where . . . there are several defendants of whom one or more appear to the writ and another or others of them fail to appear, the plaintiff may sign interlocutory judgment against the defendant or defendants so failing to appear, and the value of the goods and the damages or either of them, as the case may be, may be assessed, as against the defendant or defendants suffering judgment by default at the same time as the trial of the action or issue therein against the other defendant or defendants, unless the court shall otherwise direct: . . . ."

D. E. F. Luke for the plaintiff;
Candappa for the first defendant.
The second defendant did not appear and was not represented.

DOBBS, J.:

On June 14th, 1964 the plaintiff was riding as passenger on the pillion of motor cycle C 562 owned by him but driven at the time by one Joseph Francis Smith along City Road, Wellington, travelling towards Freetown. At the junction of Peeler Street, Wellington, the motor cycle collided with a motor bus E 2243 owned by the first defendant and driven by the second defendant. The plaintiff suffered physical injury and the motor cycle was damaged. The plaintiff accordingly took these proceedings in this court claiming damages against the first defendant and the second defendant for the alleged negligence of the second defendant. The first defendant is of course sued under the doctrine of *"respondeat superior,"* being the employer of the second defendant; no issue has been raised as to this so that if I find the second defendant was negligent I can find the first defendant also liable to the plaintiff.

Particulars of negligence have been given in the statement of claim. Of these, two only seem to be relevant to the facts of this case, *viz.*, (iii) failing to keep any proper look out, or to have any or any sufficient regard for pedestrians in the road, or for the driver and passenger of the motor cycle or for other users of the road; and (v), swerving suddenly to the right.

The defence is a denial of negligence and throws all the blame for the accident on the driver of the motor cycle, giving particulars of negligence against him. In the circumstances of this case I do not

think we are concerned to decide whether the driver of the motor cycle was negligent or not. If the first defendant thought he was wholly or in part to blame he could have had him joined as a defendant and then the question of proportion of blame would have arisen. If it is shown that the second defendant was negligent at all the plaintiff is entitled to succeed against him.

The plaintiff and Joseph Francis Smith both gave evidence which in the main was similar and may be summarised as follows: at about six p.m. on June 14th, 1964 they were travelling on the motor cycle towards Freetown at between 30 and 40 miles per hour. They first noticed the defendant's vehicle in front of them as they were passing Wellington Distillery. They came up behind the defendant's vehicle in City Road, Wellington, before the scene of the accident. Smith ascertained that the road ahead of the defendant's vehicle was clear of approaching traffic so he hooted and started to overtake. As he hooted, the defendant's vehicle veered towards the near side of the road, indicating, so Smith thought, that the driver was giving way for him to overtake. When the front wheel of the motor cycle had just passed the front end of the defendant's vehicle the defendant's vehicle pulled over to the right and caught the motor cycle in the middle, sending it to the offside of the road and tumbling the plaintiff and Smith into the offside gutter. The plaintiff said he was knocked semi-conscious. He and Smith were taken to the Connaught Hospital in the defendant's vehicle. Both the plaintiff and Smith denied that the second defendant gave any signal either by trafficator or by hand of his intention to turn right. The plaintiff denied that at the time it was raining or the road was wet.

The second defendant said he was driving his vehicle along City Road, Wellington, in the direction of Freetown and intended to turn right into Peeler Street. About 11 yards before Peeler Street he switched on his flashing indicator to show his intention of turning right into Peeler Street and also gave a hand signal to the same effect. It was drizzling with rain at the time and he had his parking lights switched on. He said that as he was turning he heard a noise from the direction of his rear tyre. He stopped immediately and got down from his vehicle. He then saw the plaintiff and Smith in the right hand gutter. He said that as the result of the collision there was a scratch right along the right side of the bus terminating in a hole near the front bumper.

He called as a witness one Aki Davies who says he witnessed the accident whilst standing at the top of Peeler Street. This witness

did not give a very clear picture of the accident and said nothing about the actual collision between the vehicles. He said that it was not raining at the time, that it was not dark and that the defendant's vehicle had not its parking lights alight. He said the defendant gave a flashing indication for turning right but gave no hand signal.

Mr. Macfoy, the Vehicle Certifying and Examining Officer, gave evidence of examining the defendant's vehicle after the accident. He said he found the offside front bumper bent outwards and the offside cab door had the paint grazed in a straight line. This evidence does not tally exactly with either that of the plaintiff or the defendant. It does not support the contention that there was a graze running the whole length of the body. It does not support the contention of the plaintiff that the motor cycle's front wheel had already passed the front end of the defendant's vehicle before he turned right. It does however indicate that the point of impact was towards the front of the vehicle.

I should have mentioned that the second defendant said his vehicle was equipped with reflecting mirrors, one on the left and one on the right of the vehicle. He said he looked into the right hand mirror before making his turn and he saw nothing.

Having carefully considered the evidence I have come to the conclusion that the second defendant was negligent. This is without giving any opinion at all on whether or not Smith was also negligent. The evidence that the second defendant first veered to the left was not challenged in cross-examination nor did he deny it in his evidence. I am satisfied that he did veer to the left to get a wider sweep into Peeler Street and that, without interruption, having gone to the extreme left he pulled over to the right. At the very moment he pulled over to the right the motor cycle was already alongside in the process of overtaking. I do not believe the second defendant looked into his right hand mirror before turning—if he had, how could he have failed to see the motor cycle? I should mention that I accept the evidence of the second defendant's witness that it was not dark at the time. I do not think the second defendant took sufficient care to ensure that the road was clear before he made his right turn. I am satisfied that he gave no hand signal. Whether or not he flashed his indicator, I think it was his duty to have stopped after pulling over to the left before making his right turn. Had he done so, whether the motor cycle hooted or not, I am sure he would have been aware of the presence of the motor cycle by the very noise of its engine. I accordingly find that the second defendant was negli-

gent *vis à vis* the plaintiff and that the first defendant is liable to the plaintiff for such negligence.

Now I have to consider the question of damages. I shall deal first with general damages for personal injury. The medical evidence was that the plaintiff sustained a simple fracture of the left ulna (one of the bones in the left forearm) and an abrasion on the right knee and that he was in pain when he was attended to and that pain from the fracture would be severe. No evidence was given as to pain or discomfort after the arm had been set in plaster and during the process of the two portions of the bone knitting together. No evidence has been given that the fracture has not healed properly; no evidence has been given that the fracture has caused any permanent disability. The plaintiff was receiving treatment until October 1964.

It appears that the only head of damage I have to consider is that of pain and suffering. For this I award Le200. Still under the head of general damage, I think the plaintiff is entitled to something for inconvenience arising from the accident. He has not put in a claim for loss of use of the motor cycle, but his having it put out of use would cause him inconvenience and there would be all the bother and inconvenience of attending hospital, presumably giving a statement to the police and such like things. For this I award Le40. The general damages therefore come to Le240.

With regard to the special damages claimed, evidence was given only in respect of damage to the motor cycle, damage to clothing and loss of earnings. With regard to the motor cycle, although the plaintiff said that at the time of the accident its value was £110, he also said he had bought it second hand in the preceding February for £80. He gave no evidence of any improvements or repairs to bring the value up to £110. I therefore hold that the value at the time of the accident was £80; this is being generous because it is not taking into account any notional depreciation from February to June 1964. The plaintiff said he sold the motor cycle piece by piece as spare parts and received a total of £62. I therefore award the difference between £80 and £62, *i.e.* £18 or Le36.

The plaintiff said he had a wallet in his hip pocket containing £6. He did not say in evidence that this was lost. However to make any award under this head I should have required much more detailed evidence, *e.g.*, as to the security of the pocket, the time of discovering the loss and what steps were taken to ascertain the fate of the wallet. I therefore award nothing under this head.

With regard to the shirt and trousers damaged, he said the cost of replacement was £6. He did not say the damaged garments had become completely worthless or how long he had had them. I award £4 or Le8 under this head.

The plaintiff said he was away from work at Sierra Leone Daily Mail Ltd. for 21 days and in consequence was not paid for this period, the relevant amount being £30. I must confess that I was not too happy on this question. No reason was given why it was necessary to be away as long as 21 days in view of the nature of the plaintiff's employment, *viz.*, Publication Manager. However, counsel for the defence did not press this matter very strongly so I allow the amount claimed £30 or Le60.

The special damages therefore total Le104. There will be judgment for the plaintiff against both defendants for Le240 general damages and Le104 special damages making a total of Le344 and costs to be taxed.

I think I should add a note with regard to the position of the second defendant. It will be noticed that I have given final judgment against him for the Le344. I appreciate that interlocutory judgment in default has already been signed against him. I also note that an order was made for assessment of damages by the Master and Registrar but no formal order has been drawn up and entered. I think had the true position been shown to the learned Acting Chief Justice he would not have made the order for assessment. I would draw attention to O.X, r.6 which deals with the case of default of appearance of one defendant where more than one defendant is sued. The rule provides for the damages to be assessed as against the defendant or defendants suffering judgment by default at the same time as the trial of the action against the other defendant or defendants, unless the court shall otherwise direct. As the plaintiff cannot have more than one award of damages I think my award must be taken to have discharged the order for assessment of damages against the second defendant.

Judgment for the plaintiff.