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are alleged to be citizens of Washington, D. C. and two are citizens of Maryland. To obtain complete federal adjudication of their rights plaintiffs must sue each defendant in the district of which he is an inhabitant. Thus plaintiffs must incur the expense of at least two distant suits—one in Washington and one in Maryland. The Washington defendants could not be sued in Maryland over their objection; the Maryland defendants could not be sued in Washington. Also, all of the defendants might very easily be indispensable parties. In such event, if they continued their refusal to waive venue, suits brought in either Washington or Maryland would be dismissed because of the absence of the indispensable defendants. Thus, the plaintiffs would be completely barred from all access to the federal courts merely because they were so unfortunate as to possess two perfectly good grounds for substantive federal jurisdiction instead of only one.

An amendment to the statute striking out the objectionable word “only” and allowing plaintiffs to sue in their own districts whenever diversity of citizenship is shown would greatly clarify the situation.

JOHN T. KILPATRICK, JR.

Negligence—Res Ipsa Loquitur—Application to Unexplained Automobile Accident

The Supreme Court of North Carolina recently applied the doctrine of res ipsa loquitur in a civil action for personal injuries arising out of an unexplained automobile accident. That doctrine is often stated as follows: “There must be reasonable evidence of negligence; but where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by


the defendant, that the accident arose from want of care.\textsuperscript{1} The defendant was driving a car around a slight left curve on a dirt road at a moderate rate of speed. The plaintiff was riding in the car as a guest. Suddenly, the car started going toward the right, and continued to do so until it ran off the road into a ditch, causing plaintiff's injuries. The defendant testified that he attempted to turn the car back toward the center of the highway, but, for some reason unknown to him, it failed to respond to his efforts. Nor did the plaintiff have any explanation for the accident. He brought this action, alleging general negligence in the operation of the automobile, and was nonsuited in the lower court upon failure to produce any evidence of negligence. The Supreme Court reversed this judgment, holding that the mere fact of the happening of the accident raised an inference of negligence sufficient to take the case to the jury.\textsuperscript{2}

The court did not use the phrase "\textit{res ipsa loquitur}" in the course of the opinion. However, this doctrine was clearly stated by the court as a basis for the decision in the following language: "When a thing which caused an injury is shown to be under the control and operation of the party charged with negligence and the accident is one which, in the ordinary course of things, will not happen if those who have such control and operation use proper care, the the accident itself, in the absence of an explanation by the party charged, affords some evidence that it arose from want of proper care."\textsuperscript{3}

The phrase "\textit{res ipsa loquitur}," the English translation of which is "the thing speaks for itself," was first used by Baron Pollock in 1863 in a case where a barrel of flour fell from a window and injured the plaintiff.\textsuperscript{4} The development of the doctrine has led to wide-spread confusion in the courts as to the types of accidents to which the doctrine applies\textsuperscript{5}\* and as to the procedural effect of its application.\textsuperscript{6}\* In North Carolina it is held that it gives the plaintiff a \textit{prima facie} case, thus assuring the plaintiff that he will get his case to the jury, and creates an inference of negligence which the jury may or may not accept.\textsuperscript{7}\*

\textsuperscript{2} Etheridge v. Etheridge, 222 N. C. 616, 24 S. E. (2d) 477 (1943).
\textsuperscript{3} Etheridge v. Etheridge, 222 N. C. 616, 619, 24 S. E. (2d) 477, 479 (1943).
\textsuperscript{5}\* For discussions of the various types of accidents to which the principle is applied by North Carolina courts and courts of other jurisdictions see Harpe, \textit{Law of Torts} (1933) §77; Prosser, \textit{Torts} (1941) §43; Note (1941) 19 N. C. L. Rev. 617.
\textsuperscript{6}\* For discussion of the procedural effect of the application of the principle see Note (1941) 19 N. C. L. Rev. 617.
\textsuperscript{7}\* Mitchell v. Saunders, 219 N. C. 178, 13 S. E. (2d) 242 (1941), commented upon in Note (1941) 19 N. C. L. Rev. 617; White v. Hines, 182 N. C. 275, 109 S. E. 31 (1921); Womble v. Merchants Grocery Co., 135 N. C. 474, 47 S. E.
Although courts of other states have frequently applied the *res ipsa loquitur* doctrine to suits arising out of injuries sustained in unexplained automobile accidents, the principal case is significant because it is the first such application by a North Carolina court. All previous attempts by counsel to have the doctrine applied to automobile accident cases where there is no direct evidence of negligence have, on facts distinguishable from those of the instant case, met with complete failure. In some of these cases the court refused to draw an inference of negligence because it appeared that the accident was caused by unexplained skidding, saying that skidding often occurs without any fault on the part of the driver and should, therefore, give rise to no inference of negligence. Most courts agree, unless the defendant is a common carrier. Where there has been a collision between two moving vehicles, the court has refused to apply *res ipsa loquitur* without much discussion. This would seem to be proper since there is no reason to infer that one party rather than the other was negligent, and since the injury cannot definitely be said to have been caused by the operation of an instrumentality under the exclusive control of either party. Most courts agree, but apply *res ipsa loquitur* where a moving vehicle collides with one that is properly parked. Nor will the courts apply the doctrine where all the facts and circumstances causing the accident are known and testified to by witnesses, nor where nothing is shown other than that a person in the road was hit by an automobile. Other jurisdictions have applied *res ipsa loquitur* where a parked automobile has started into motion from an unknown cause and caused

493 (1904). In White v. Hines, 182 N. C. 275, 287-288, 109 S. E. 31, 37-38, the court said: "A *prima facie* case or evidence is that which is received or continues until the contrary is shown. . . . Even if the *prima facie* case be called a presumption of negligence, the presumption still is only evidence of negligence for the consideration of the jury. . . . In some of our decisions the expressions *res ipsa loquitur*, *prima facie* evidence, *prima facie* case, and presumption of negligence have been used as practically synonymous. As thus used, each expression signifies nothing more than evidence to be considered by the jury."
damage to persons or property.\textsuperscript{16} No case of this kind has arisen in North Carolina.

It has been occasionally held\textsuperscript{17} that \textit{res ipsa loquitur} does not apply where evidence of the true explanation of the accident is as readily accessible to the plaintiff as to the defendant. A plaintiff riding in an automobile as a passenger, as was the plaintiff in the principal case, would usually be in a position to observe as much about the cause of an accident as a defendant driver of the vehicle. This requirement is, however, of dubious validity. "It is difficult to regard this factor as anything more than a makeweight, or to believe that it can ever be controlling. If the circumstances are such as to create a reasonable inference of negligence, it cannot be supposed that the inference ever would be defeated by a showing that the defendant knew nothing about what had happened; and if the facts give rise to no such inference, a plaintiff who has the burden of proof in the first instance could scarcely make out a case merely by proving that he knew less about the matter than his adversary."\textsuperscript{18}

In addition to his allegation of general negligence, the plaintiff in the principal case alleged as a specific act of negligence that the defendant had, immediately before the accident, passed another automobile going in the same direction at a road intersection in violation of law. The court held that this was immaterial due to lack of causal connection with the accident. Courts have disagreed as to whether or not a plaintiff who has pleaded specific acts of negligence is entitled to rely on the doctrine of \textit{res ipsa loquitur}.\textsuperscript{19} The court did not discuss this question in the principal case, merely stating that the plaintiff's pleadings stated negligence in general terms.

In 1935, the Court of Appeals of New York refused to apply the doctrine of \textit{res ipsa loquitur} to facts similar to those of the principal case,\textsuperscript{20} despite an earlier New York case the other way.\textsuperscript{21} The basis of the decision was that the probability that the automobile left the highway because of the defendant's negligence was no greater than the probability that the accident was caused by some mechanical failure. The court in the principal case stated that there was no evidence of any

\textsuperscript{18} PROSSER, TORTS (1941) §43.
\textsuperscript{19} Note (1938) 8 NORE DAME LAWYER 257.
mechanical defect in the automobile, and did not discuss the point further. The writer is in sympathy with the ruling of the North Carolina court, and thinks that it was proper to apply *res ipsa loquitur* to the facts of the principal case, thus giving the plaintiff a chance to recover for damages which he probably sustained as a result of negligence on the part of the defendant.

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