

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION

No: 98 NJ 0655

Royal Courts of Justice  
Strand  
London WC2A

Tuesday, 10 November 1998

B e f o r e:

MR N WILKINSON QC  
Sitting as a Deputy High Court Judge

HOATH

PLAINTIFF

- v -

CRIPPS HARRIES HALL

DEFENDANT

(Tape Transcription by Smith Bernal Reporting Limited,  
180 Fleet Street, London EC4A 2HD  
Tel: 0171 404 1400  
Official Shorthand writers to the Court)

MR M RUSSELL (Instructed by Messrs Moss, Beachley, Mullem &  
Coleman, London W1) appeared on behalf of the Plaintiff

MR S WALSH (Instructed by Messrs Wansbroughs, London WC2)  
appeared on behalf of the Defendant

J U D G M E N T  
(As approved by the Court)

Tuesday, 10 November 1998

J U D G M E N T

**THE DEPUTY JUDGE:** Cripps Harries Hall are a long-established firm of solicitors with offices in Kent and Sussex. They are the defendants in this action. Over many years, the firm had been instructed to provide legal services to the family of which Mr Hoath is a member. John Martin Edward Hoath is the plaintiff in these proceedings.

Unhappily, the relationship between client and solicitor soured. Invoices submitted by Cripps Harries Hall for work done were unpaid by Mr Hoath. Judgments were obtained for the sums claimed, and steps taken by the defendants to enforce them. In December 1991 a bankruptcy petition was presented in the Tunbridge Wells County Court, and an order was made declaring the plaintiff bankrupt. Proceedings arising out of that order continue, with the plaintiff challenging its validity.

Mr Hoath is a bitter, angry man who attributes great wrong to the defendant firm. His behaviour during 1992, 1993 and 1994 in particular, caused, and was intended to cause, considerable irritation and concern to the defendant firm.

Relevant events for the purposes of this action commenced in about January 1994 when the plaintiff put up a sign on his property at Summersales Farm. The sign read:

"Cripps Harries Hall & Co are defective, negligent solicitors who rip off their clients."

A That sign is photographed in the court papers. He put up the sign because he wished to provoke the defendants into taking legal proceedings against him, presumably an action for defamation, thereby providing him with the opportunity that he sought to ventilate his grievances before a jury.

B No proceedings were commenced by the defendants. The plaintiff says that someone he believed to be called Tim, came to remove the sign, but was disturbed by the plaintiff and that person ran off. This, he told me, was in about C January 1994.

D At some time the sign was re-erected in the position in which it is seen in the photograph to which I have referred, numbered 2 under tab 4 of bundle B. It was secured by wires E to the hedge behind it. The plaintiff tells me it was erected on his sister's land some two feet from his own land. The attitude of the defendants to the plaintiff's actions can be understood from the minutes of the F partnership board dated 12 January 1994, and the minutes of the equity partners meeting which was held on 1 March of that year. Initially the route that the defendants very G properly considered was that of an application for an interlocutory injunction, notwithstanding certain misgivings that they held about that course. In the event, they H decided to abandon that course in favour of a self-help solution, on the basis that their prospects of gaining interlocutory relief and, if so, of the plaintiff heeding any court order made with that effect, were not sufficiently good.

A The nature of the self-help solution was described by  
one of their partners who gave evidence to me, Mr Voss, as  
an abatement of a nuisance. Mr Walsh, who represents the  
B defendants before me, readily conceded that the sign could  
not be categorised as a nuisance in law, but that the law  
should, in his submission, recognise the concept of  
abatement of defamation. A moment's reflection reveals the  
C defects of such an approach. If an interlocutory injunction  
could not provide the remedy on the basis that freedom of  
speech is highly prized (and a defence of justification in  
defamation proceedings has a special significance in our  
system of law) then any idea of an enforced removal of the  
D sign being a lawful alternative fails immediately.

E The defendants decided between the partners, not at a  
minuted meeting, to take steps to remove the offending sign  
from Mr Hoath's land, or from the land where it was  
situated. This decision was taken not so much because it  
was thought that people would believe the truth of what was  
written upon the sign, but as Mr Christopher Hall, the  
F senior partner at the time told me, local comment was "why  
were we not doing something about it?"

G The pressures on the firm were understandable. In my  
judgment, the decision they took to solve the problem was  
unjustifiable in law. Mr Hoath is indeed a mischievous and  
manipulating individual. He tweaked the tail of Cripps  
H Harries Hall. It is said that he stage-managed the whole  
situation, and to a large extent, he did. He purported to  
relinquish control and responsibility for the sign in a

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letter written to the defendants dated 14 February 1994. On  
23 March 1994, he further suggested that the sign was not on  
his land, but on the land of another private individual,  
unnamed. As I have already indicated, this was his sister.  
He, however, wished to embarrass the defendants, who held  
the deeds of the family property, because he believed that  
they would not be able to identify where the sign was  
positioned by reference to those deeds.

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Mr Christopher Hall sought to justify the actions of  
self-help by these concessions. I find that Cripps Harries  
Hall as a firm did not take them seriously, as is apparent  
from a letter written by Mr Ashcroft, one of their senior  
litigation partners, on 29 March 1994, the day before  
attempts were made to remove the sign. I will turn to deal  
with the terms of that letter in due course.

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It was hoped that by telling Mr Hoath, as they did, in  
that letter and a previous letter dated 22 March, that they  
would attend to take the sign down and/or remove it from its  
position, that its removal might be effected peaceably. By  
informing the police by telephone that there might be a  
breach of the peace at or about 10 am on 30 March, they  
indicated an understandable concern that their hopes in this  
regard might not be justified. The note of the telephone  
call is found at bundle B, tab 3, page 39.

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By deciding to abate the problem (to use a neutral  
word) the defendants knew that their servants or agents  
detailed to perform the task would (1) be trespassing on  
land belonging to another; and (2) committing a trespass to

A  
property, namely the sign belonging to Mr Hoath. These actions would be unlawful, and any different view based upon the plaintiff's letters to which I have referred, was, in my judgment, misconceived.

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I turn now to the events of 30 March. As I have indicated, the defendants gave notice of their intentions, and I should read the letters that they wrote on 22nd and 29th March. On 22 March, a letter was written by Mr Ashcroft in these terms:

C  
"Your Affairs

D  
We refer to our letter of 1 March. We have not heard from you in response and assume that you have no objection to our removing the sign. Accordingly, we propose to attend at 10 am on Wednesday, 30 March 1994 with our workmen to remove the sign from public view. The sign will be left on your property and will not be removed.

If you object to this course of action, please let us know in good time prior to 30 March."

On 29 March this letter was written (again by Mr Ashcroft):

E  
"Your Affairs

F  
Thank you for your letter of 23 March. The writer has discussed with his colleagues who are more familiar with the title to Summersales Farm the possibility of the sign being on the property of a third party. We no longer hold the deeds to the property and cannot comment on the possibility that the sign is on land owned by another. The writer has not seen the sign recently, but reports indicate that it has not been moved to any substantial degree, if at all. The sign itself would appear to belong to you, and we repeat our intention to attend tomorrow to remove the sign."

G  
The letter that had been written by Mr Hoath on 23 March, contained the assertion that the sign was now on a third party's land, that third party not being the East Sussex County Council. As I have indicated, the terms of the

letter of 29 March 1994, in my judgment, indicate that the defendants did not take that assertion seriously.

Mr Christopher Hall, it seems, asked his son, Colin Hall, to attend at 10 am on 30 March, and told him that it would be lawful to remove the sign from the place in which it was fixed and take it away. Mr Christopher Hall justified these assertions by telling his son that Mr Hoath had relinquished title to the sign and disowned the land. This was the evidence of Colin Hall. I have not found this part of Colin Hall's evidence easy to understand or accept, but I do accept that he felt justified in his actions in reliance upon his father's assurances. Colin Hall was at this time 23 years of age, and training to become a solicitor. Perhaps he was not inclined to doubt his father, albeit that his legal training should have raised questions in his mind; he should have had doubts about the legitimacy of the actions that he was being invited to take.

Colin Hall obtained the assistance of Colin Russell, who was an employed farm worker on Mr Christopher Hall's farm. Christopher Hall and Mr Voss (another partner of the defendant firm) attended the scene in a Renault. Colin Hall and Colin Russell went to the plaintiff's farm in a van and they arrived at or about 10 am on 30 March.

The plaintiff was, of course, waiting for them. He had summoned a local reporter, Mr Higgett, by telephone that morning, having received the letter dated 29 March. Present also was a solicitor, Mr Parker, and Mrs Hoath, neither of whom gave evidence before me. The plaintiff says that he

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was present with his camera and wearing carpet slippers, and indeed, the photographs that were taken by Mr Higgett show that this was so. It follows that Mr Higgett also had his camera, and indeed he was intending to photograph and report this incident for the purposes of the newspaper for which he then worked, The Clarion.

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Christopher Hall, as is common ground, told "the workmen", as I find they were in the context of the letter that was written on 22 March, namely Colin Hall and Colin Russell, to go and get the sign. Thereafter, the two young men moved onto a grass triangle dressed respectively in red and blue overalls - Colin Hall being in red. They were carrying hammers, a sledge hammer by Colin Hall, and a club hammer by Colin Russell. It may or may not be that they took wire cutters with them as well. The purpose for which they held those implements, as I find, was solely to assist in the removal of the sign.

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The two men moved to the sign. Mr Higgett told me that they were purposeful and moved swiftly. The plaintiff told them that they were trespassing, but the men ignored him. When they got to the sign, they started to free it from its fixings. The plaintiff, as can be seen from the photographs, placed his arm upon it. There are disputes in the evidence at this stage. The plaintiff alleges aggression on the part of both the overalled men; Colin Russell and Colin Hall assert that Colin Hall was placatory and explained to the plaintiff that they had come to take the sign which had been relinquished by the plaintiff.

A Reference was made, so Colin Hall told me, to the  
correspondence with the defendant firm. I should add that  
no mention had been made in that correspondence of the sign  
being taken away from the plaintiff's land.

B The sign was taken down, and the plaintiff moved away  
and took a photograph, no. 6 in the bundle. The two men  
took the sign towards the van. The plaintiff pursued them  
and caused the sign to go to the ground by grabbing it.  
C This part of the story can be seen in photographs 10 and 11.  
Photograph 12 reveals an incident (the first incident) where  
confrontation arose between the men. On the plaintiff's  
account, Colin Hall swung his sledge hammer and struck the  
plaintiff on the inner side of his right arm at the elbow.  
D Thereafter, the plaintiff says that he swung at Colin Hall,  
but says that he did not know if contact was made. In an  
earlier statement made on 15 April 1994 he had indicated  
E that he struck Colin Hall's left cheek, now he says he is  
not sure. It is Colin's Hall's evidence that he was struck  
on the point of his nose, and that evidence I accept.

F At this point Colin Russell moved in to restrain the  
plaintiff, pulled him to the ground and held him there, and  
that is likewise reflected in the photographs. Colin Hall  
got up, took the sign and dragged it towards the van.  
G Christopher Hall told Colin Russell to let go of the  
plaintiff, which he did, whereupon the plaintiff pursued  
Colin Hall to the van where the sign had, by then, been  
dragged. The plaintiff was agitated, and as he approached  
H the van in its position in photograph 1, his arms were

A flailing. As he got to the van, Colin Russell ran up behind him and restrained him a second time. This is the second incident and, as a result of it, the plaintiff fell once more to the ground, from which on this occasion he did not rise, having suffered injuries, until an ambulance arrived.

B My approach to the evidence is guided by the following impressions. Firstly, the plaintiff cannot, in my judgment, be regarded as a reliable witness. He is plainly an obsessive and embittered man, with strong feelings against C the Hall family and the defendant firm. Secondly, I felt able to rely upon the evidence of Colin Hall and Colin Russell as to their beliefs and intentions. Thirdly, and most importantly, I found Mr Higgett an impressive source of D independent evidence, albeit that he was behind the camera lens and did not see everything that occurred.

E Against the foregoing background, I find the following facts.

F 1. At the outset of the encounter, no-one was intending or contemplating violence. The plaintiff was wearing carpet slippers and carrying a camera, and the hammers were carried solely for use in the removal of the sign.

G 2. The plaintiff's evidence of aggression on the part of Colin Hall and Colin Russell as they came to the sign and started to free it, is evidence that I reject.

H 3. I find that the plaintiff was at all times indicating his contention that both men were trespassing and were not entitled to remove the sign.

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4. Colin Hall and Colin Russell ignored the plaintiff's protestations, because they believed their actions were legally justified, albeit, as I have already indicated, they were not.

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5. The plaintiff moved away to take photograph 6 without any aggression having been offered to him by either of the men in overalls.

6. The plaintiff chased after the two men with the sign and grabbed it, causing it to go to the ground.

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7. Colin Hall did not swing his sledge hammer at the plaintiff. However the injury photographed in photograph 23 of the bundle was caused, it was not, on the evidence, caused by a sledge hammer used by Colin Hall.

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8. At the stage of this incident shown in photographs 13 and 14 (the first incident), Colin Hall was not moving his hands in karate chop fashion, nor was he being aggressive towards the plaintiff. The plaintiff did swing his arm in the direction of Colin Hall, and he did so in the manner described by Mr Higgett, namely (and I refer to my note of his evidence): "He did aim a blow at the man in the red overalls. I believe he missed. The man in the overalls was off balance. It was a half-hearted attempt by Mr Hoath." On the evidence of Colin Hall, which I have indicated I accept, there was minor contact with his nose causing him to fall backwards off balance onto his backside.

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9. Colin Russell reacted to this part of the incident by physically restraining the plaintiff, whom he, Colin Russell, believed might strike Colin Hall again. I find

A that this would not have been the plaintiff's intention, but that it was a reasonable belief on Colin Russell's part at that time.

B 10. Colin Russell restrained the plaintiff on the ground, in a manner which was forceful, with his forearm to the throat, during a prolonged period, during which Colin Hall moved the sign to the van. At this point the restraint was excessive in manner and duration. Colin Russell, as I find, if it be relevant, was not motivated by any intention to hurt the plaintiff.

C 11. Colin Russell released his restraint only when instructed to do so by Christopher Hall who was directing operations. Thereafter, the plaintiff became aware that the sign was being removed and sought to recover it. The plaintiff ran towards the van, shouting words to the effect "Don't take the sign".

D 12. Colin Russell construed the plaintiff's intentions as potentially violent towards Colin Hall at this time, and the plaintiff was undoubtedly distressed and his arms were flailing. I am not satisfied that any punch was aimed at Colin Hall at this time. The plaintiff, as I find, was concerned for his sign and not to harm Colin Hall. I am satisfied that Colin Russell forcibly restrained the plaintiff from behind by jumping and grabbing him around the neck and bringing him to the ground. This was a level of force which was unjustified and excessive in the circumstances, and caused injury to the plaintiff.

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13. I accept Mr Higgett's evidence that Colin Russell appeared shocked at what had happened, namely, that the plaintiff had been hurt to a degree far in excess of anything intended by him.

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14. At this stage the plaintiff suffered an injury to his neck which was significant, and has produced lasting consequences, together with other, less significant, but nonetheless painful, injuries.

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Applying the law to those findings of fact, I reach the following conclusions.

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1. Colin Hall and Colin Russell were trespassers upon the land and trespassers against the sign.

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2. The plaintiff was entitled to use reasonable force to repel both acts, having made his intentions clear to both men.

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3. The plaintiff's actions, in swinging at Colin Hall, were arguably justifiable in all the circumstances. Colin Russell's initial restraint was a reasonable restraint. The continued restraint of the plaintiff was not reasonable, and therefore unlawful in manner and extent.

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4. The second incident of restraint was unreasonable. Firstly, there was insufficient justification for it as I find since the plaintiff was plainly intent upon the recovery of the sign which Colin Russell and Colin Hall had no right to remove. The proper course at this stage was to give up attempts to take the sign and to move away from it and from the plaintiff. Secondly, the manner of the restraint was excessively forceful and this caused immediate  
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concern to Mr Higgett. He at the time was loading film into  
his camera, but realised that he should not be taking  
further photographs of the incident, rather he should be  
intervening to bring to an end what was happening, something  
which he described as "an event that had got out of  
control".

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As to liability, I conclude that Colin Russell was  
responsible in law for an unjustified assault, technically  
a battery, upon the plaintiff by reason of which the  
plaintiff suffered injury.

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It is argued on behalf of the defendants that, in the  
event of my finding as I have, nevertheless, liability does  
not attach to the defendants as a firm, since the actions  
which found liability were those of Colin Russell acting  
solely on his own account. I do not propose to set out the  
line of reasoning urged in pursuance of this argument in  
detail, since I reject it utterly. Colin Russell was not  
the servant of Cripps Harries Hall, albeit that he was the  
servant of Christopher Hall. He was on all views of the  
evidence, acting on behalf of and in the interests of the  
defendant firm, on the orders of and under the direction of  
its senior partner. These facts were known and understood  
by all persons present, and in that I include Mr Voss.  
Likewise, I am confident that those who authorised the self-  
help remedy at Cripps Harries Hall, knew that Christopher  
Hall would recruit the necessary manpower to effect the  
remedy. If violence was not expressly authorised, as I  
unhesitatingly find that it was not, then liability attaches

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C nevertheless to Cripps Harries Hall upon the well-established basis of liability consequent upon a wrongful mode of doing an authorised act. This conclusion is reinforced by the telephone call to the police. The defendants must be taken as having known that their self-help remedy might produce a breach of the peace although not necessarily in any physically violent form. This was a situation which the defendants recognised might get out of hand, as I have found that it did. My findings and conclusions in law on the question of vicarious liability are not dependent upon that state of knowledge, but are reinforced by it.

D I turn now to the question of damages. The injuries suffered by the plaintiff are substantially agreed. An agreed memorandum was put before me which, at its first paragraph states that:

E "His [the plaintiff's] neck and arm symptoms were caused by the incident of 30 March 1994."

F  
G The precise nature and origin of the damage done to the plaintiff's neck was not agreed between the medical experts, but irrespective of the site of damage, the prognosis for his symptoms in relation to the neck and arm symptoms is poor. It was agreed that he had asymptomatic cervical spondylosis at the time of the incident, and that those symptoms were rendered symptomatic by the incident.

H Insofar as it is of any relevance, I would prefer the evidence given by Professor Swash (defendant) to that given by Dr Harvey (plaintiff) as to the nature of the injury caused to the plaintiff, that is to say, I find that damage

was caused to the nerves in the cervical spine, and that this is not a brachial plexus injury.

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C There are subsidiary matters which arise from the medical evidence which concern complaints made by the plaintiff of injury to his back (lower back) and injuries to his eye, or symptoms in the eye which have arisen since the incident. The plaintiff, as I have indicated, is a man whose evidence in this regard, as in other respects, cannot be regarded on its own as reliable, because, he is an obsessive man given to elaboration.

D  
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F The medical notes which deal with the post-accident medical position, show that the plaintiff complained to his general practitioner in March 1994 of his back "feeling stiff". Thereafter, he attended on further occasions in April, May and June of 1994, and it is not until June 1994 that we discover further reference to lumbar pain, "right L 2-4". It is agreed between the doctors that if there was no complaint of pain at that level prior to June 1994, then that lumbar pain is not attributable to this incident. I find on the evidence that I am not persuaded that the complaint of back stiffness in March 1994 is the same complaint as was made in June 1994. Consequently, on that issue I find that that aspect of the plaintiff's problems is not attributable to the assault.

G  
H So far as the eye symptoms are concerned, the doctors agree that they may be migrainous and related to stress, personality and pain. In the light of that agreement

between them, I am likewise not persuaded that the eye symptoms are proved to be attributable to the incident.

The plaintiff has complained of other symptoms which he suggests have disabled him from working. In particular, swelling of the left arm and, he told me, swelling of the left leg. If such symptoms exist, and indeed it appeared that they did during the course of the plaintiff's evidence, I am unable to find to what they may be attributable, but they are not, on the evidence, attributable to the incident of 30 March 1994.

I find that the injuries proved to have been suffered by the plaintiff on 30 March, have prevented him from working as a lorry driver, certainly beyond the extent to which he has carried out such duties since the incident, and I do not understand that that proposition is challenged in this case. Evidence was given by the doctors that it would not be safe for someone with a stiff neck to undertake work as an independent lorry driver, and no suggestion has been made before me that the plaintiff should resume lorry driving in the future. Consequently, I have to determine what would have been the plaintiff's earning prospects but for the accident.

Before turning to deal with that difficult and complex issue, I have to fix a figure for general damages. That is no easy task, and I have been invited to have regard to the categories that are set out in the Judicial Studies Board guidelines, there being, as is often the case in relation to

this type of injury, no very helpful comparable to be found in Kemp & Kemp.

The picture is complex because I have to decide what is the appropriate level of pain and discomfort that is attributable to the neck injury that was caused to him, and have to disregard other matters of which the plaintiff has complained. That is plainly an exercise that can only be done in the most general terms.

The injury was suffered by an unusually sensitive man, and I also have to bear in mind that some element of any award I make under this head should reflect the injury to the plaintiff's feelings, he having been, as I find, assaulted, by somebody seeking to take away his property. That element is very minor in my award, but doing the best I can, and concentrating as best I can upon that part of the plaintiff's present and past difficulties that is attributable to the defendant's tort, I award general damages in the sum of £12,500.

So far as earnings losses are concerned, I say at once that I have been provided with very limited information. The plaintiff tells me and I accept, that he used to earn a living as a long-distance haulier. He had his own business which failed. I have no idea what income he gained from it. He is, undoubtedly, a person suited to lone employment. I do not doubt that drivers of lorries can make substantial incomes, but the figures advanced in the schedule to the statement of claim, are wholly unsupported, and I can have no regard to them.

A The plaintiff relies upon letters which are in the bundle, which are testimonials provided by Safeway and Manpower. The Safeway letter, which I think was dated in 1996, albeit it carries no date on its face, states:

"To whom it may concern,

B Having known Mr John Hoath for some at least 5-6 years now, I can most definitely say that with his impeccable record as an agency driver with Manpower, that in my capacity as transport manager for Safeway, and if John was fit and well, I would have considered, and no doubt offered him, a position as an LGV driver for Safeway.

C In the time that I have known John, I have always found him to be polite, hard-working, reliable and always willing to help.

If I can be of any further assistance, please do not hesitate to contact me on the above telephone number."

D It would have been of assistance to me to have heard from Mr Breeds, who is the signatory of that letter. He was not called. I find I gain little help from the letter knowing not whether the positions contemplated are full-time, part-time, or what remuneration might be associated with them.

E Likewise, on 9 August 1996, Mr Ian Smith of Manpower was able to confirm that the plaintiff was employed by Manpower from 18 September 1992 until 26 March 1996 in the role of a Heavy Goods Vehicle driver.

F "John has worked under contract to many of our key clients, and has always performed his duties well. During his time with us I have no reason to doubt his honesty, integrity or reliability, and I have always been confident in placing him with a client.

G I trust that the above is of assistance, and please don't hesitate to contact me should any further information be required."

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A He was not called to give evidence either, and I find real  
difficulties in seeking help from those letters or in  
drawing any positive conclusions from them. I am able to  
find that the plaintiff is and was an honest and reliable  
workman, but that does not help me understand how much money  
B he might have made had he not been injured on 30 March 1994.

C He is now 53 years of age and plainly consideration  
would have to be given to the availability of work for  
someone of his age. I regard him, as I have already  
indicated, as being primarily employable or best employed in  
a lone capacity because of his personality traits, and I was  
not impressed by what he had to say to me about his  
prospects in a managerial role.

D Amongst the other documents in the bundle, are the  
records of gross and net pay which are contained in a letter  
from the Inland Revenue dated 12 October 1998. That shows  
E me what the plaintiff was managing to earn prior to this  
incident and the earnings that he has made since. What is  
the proper approach to damages in these circumstances?

F Mr Walsh on behalf of the defendants says that it is  
not for the court "to cobble together a claim from the few  
documents that exist", to coin his phrase. The plaintiff,  
he says, has not proved his claim. The schedule that is  
annexed to the statement of claim is useless, and therefore  
G the plaintiff should recover no damages for loss of earnings  
at all. In my judgment, that is not the correct approach.  
It is, of course, for a plaintiff to satisfy a court that he  
has suffered a loss, and on the unchallenged evidence, he  
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A has shown that he can no longer be expected to perform the work of a lorry driver, despite his efforts made between 1994 and 1996. He is now dependent upon benefits, which have effectively replaced his pre-accident and post-accident part-time working capacity.

B It was the defendants' case, and indeed still is their case, through an orthopaedic specialist, Mr Thalagaraja, that the plaintiff might have expected to experience symptoms of cervical spondylosis sooner rather than later and that that might have caused his incapacity to carry out work as a heavy goods vehicle driver. In that regard he found himself at odds with Professor Swash, (also a defence witness) whose evidence was that there really was not any good indication from the X-rays and on statistical evidence to show that the nature of degeneration in the plaintiff's cervical spine was such that it could be said with any confidence that he would, before the end of his working life, have suffered symptoms.

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H The plaintiff has lost his employability as a lorry driver by reason of this injury. Doing my best, I approach this part of the damages claim against the following background. At the time of the incident and to date, various factors in the plaintiff's life have adversely affected his working capacity as a lorry driver. Firstly, his on-going dispute arising out of the insolvency has clearly been a barrier to his working capacity. He has become obsessively preoccupied with the law of insolvency and the law relating to solicitor's conduct. Secondly, for

A reasons that are not, as I find, connected with this injury,  
but are connected with the plaintiff's obsessive personality  
and the difficulties that have arisen out of the insolvency,  
his marriage has broken down and he now has responsibilities  
to his children, which involve them living with him every  
B other week. His own difficult personality is a feature, as  
I find, which adversely affects his overall working  
capacity, and certainly, at present, he is somebody who is  
old in terms of the job market for lorry drivers, albeit  
C that that would not be an insuperable barrier, on the  
letters that I have seen, to some employment as a lorry  
driver by Manpower or by Safeway.

D Taking all of those matters into account, the findings  
that I have reached on earnings losses to date are put in  
this way. Looking at the Inland Revenue document, it shows  
in rough terms that the plaintiff was able in the year  
E following the incident (that is to say April 1994 to the end  
of March 1995) to take home something in the region of  
£7,500. At that time, he was more involved than now in his  
problems with the insolvency which dated from his bankruptcy  
F in December 1991. In that year, comparing it with the year  
preceding it, I find that there was no provable loss of  
earnings at all. In the year following, I find that the  
G plaintiff might have expected to earn part-time earnings of  
the order of those earnings he received in 1994/95, namely  
£7,500, against which he has to give credit for the income  
he did receive of £1,200, and rounding that figure down  
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(because these are very imperfect exercises) I find a loss to the end of the year 1995/96 of £5,000.

In the years 1996/97, 1997/98 and to date, I find that the plaintiff would have been able to work in a part-time capacity to produce higher levels of income than he had previously achieved as a lorry driver, so that he might have netted £10,000 per annum on an average for those years. Consequently, in 1996/97 I find a loss of £10,000; 1997/98 a loss of £10,000; and in the months to date a rounded figure, albeit that it might arguably be higher (this is an imperfect exercise) a further loss of £5,000. So that since this incident, I find that had the plaintiff not had the neck injury and the symptoms in his arm that prevent him from being a lorry driver, he could have expected to net some £30,000.

What of the future? The future carries with it, to a greater or lesser extent, the same disadvantages which have affected the plaintiff's employability as the past. In addition, there is some doubt as to whether or not the plaintiff would have continued as a lorry driver past the age of 60. There is the question, which I have resolved on the medical evidence in the plaintiff's favour, of the likelihood of the onset of symptoms in his neck arising naturally. It may, of course, be that through heavy work, through some further accident, it might be that symptoms would have arisen and prevented the continuation of heavy driving work.

A  
B  
C  
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What of the plaintiff's residual earning capacity? He has not applied for any jobs, and there must be many areas of work from which he is not disabled. It may be that a more settled personality in years to come would permit employability in a wider area of types of employment. Further I must take into account the effects of the other ailments of which he has complained, which are not attributable to this accident and which have not been easily identified by the doctors.

Having identified a lorry driving annual earning capacity, albeit on a part-time basis that the plaintiff has lost of £10,000 net, I use that as a multiplicand for the future. He is 53 years of age, and would normally, following Wells v. Wells be able to seek a full multiplier marginally in excess of 9 for the balance of his working life, 9.4, 9.5 thereabouts. Taking account of the various matters that I have listed, it is necessary to reduce that multiplier, and I do reduce it to six years to reflect all of the matters that I have indicated. Consequently, the sum of money that I award the plaintiff for his future loss of earning capacity as a lorry driver I total in the figure of £60,000.

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