BOOK REVIEWS

The Quantum of Damages, Vol. 2 — *Fatal Injury Claims*, by David A. McI. Kemp and Margaret Sylvia Kemp with a foreword by the Right Honorable Sir Norman Birkett. London, Sweet & Maxwell Ltd. Australia, Law Book Co. of Australasia Pty. Ltd. 1956. xx and 326 pp. (£2/5/6 in Australia).

This book is a companion work to the author's recent publication on the *Quantum of Damages in Personal Injury Claims*.[1] It follows the plan of the earlier work to the extent that brief statements of the law precede extensive quotations from judgments so that the features of a text book and a case book are in a measure combined. The cases include some which are not reported elsewhere, for the reason that they do not contain novel points of law, but which nevertheless may prove useful to the practitioner as a guide to the amount of damages likely to be awarded in particular sets of circumstances. The question posed in the earlier work regarding the extent to which cases showing the amounts awarded in similar circumstances previously arising might be cited in court is now answered by *Waldon* v. *War Office*.[2] There it was held that it was within the Judge's discretion whether he would permit such reference or not, but that previous awards should not be cited to a jury.

A preliminary chapter is devoted to an exposition of the general principles on which damages are assessed in claims brought under the Fatal Accidents Acts and this is followed by an enumeration of the main classes of benefits derived by a dependent in consequence of the deceased's death, with a discussion of the extent to which such benefits must be deducted from the damages. Chapter 3 lists with brief discussion the statutory exceptions to the principle that all net pecuniary benefits received by a dependent are to be so deducted. Chapter 4 in effect commences a new part of the work concerned not so much with legal principle as with the actual practice in assessing damages under these Acts. The general review of practice in this chapter is succeeded by chapters in which cases are classified into claims for the death of a husband where he is a working man with steady earnings, a working man with prospects of increased earnings, or a business or professional man. Claims for death of a wife, an adult child, an infant child, a parent, are next treated and finally the practice on appeals against the amount of damages awarded is considered. Some miscellaneous points of law are next collected, to be followed by some miscellaneous cases set out more or less *in extenso* and in Part III claims under the Law Reform (Miscellaneous Provisions) Act, 1934 receive attention. The Appendices include relevant statutory provisions, life tables, and parliamentary answers dealing with the purchasing power of the pound sterling.

It is scarcely necessary to sound a note of warning regarding the local

[1] Published 1954. [2] (1956) 1 W.L.R. 51 (C.A.).

application of some of the legislation. The history of the statute law relating to deductions from benefits arising from the death of a relative has been significantly different in this country, and the picture of the interrelation of claims under the Fatal Accidents Acts and the Law Reform (Miscellaneous Provisions) Act is transformed by the exclusion of claims for pain and suffering and for loss of expectation of life in local adoptions of the latter Act. In this respect at least some gain has accrued from the habitual delay in the adoption of English legislation in that we have been enabled to profit by observation of the unhappy English experience. On the other hand the tables of damages awarded may not be so irrelevant to local conditions as might at first appear. The authors' practice has been to divide the damages awarded by their calculation of the annual value of the dependency so as to arrive at a "multiple" or "number of years' purchase" apparently adopted by the Court in varying sets of circumstances of age, type of relationship and business. On the assumption of a similarity between the two countries in conditions such as the length of working lives and the ages at which children become independent such multipliers should be locally significant. Some scepticism will doubtless be felt as to whether such a tabulation should be attempted at all, in view of the repeated insistence that each case depends on its individual circumstances, but it is questionable whether this insistence does not often operate simply to enable the court to give effect to personal idiosyncrasy. And the agitation specially noticeable in the criminal field for a standardisation of sentences seems to be based on a sense of injustice which may equally be excited by arbitrary differences in awards of damages in the civil field.

Among the cases involving points of substantive law which are set out by the authors, *Burgess* v. *Florence Nightingale Hospital for Gentlewomen*[3] is one of the most interesting. The plaintiff and his wife were professional dancing partners, their income being derived from demonstration fees and prize money won in competitions. In an action under the Fatal Accidents Acts based on the loss of the wife due to the defendant's negligence, damages were awarded for the loss of the wife's prospective contribution to the family living expenses, but none for the diminution of the husband's own prospective earning capacity caused by the loss of an allegedly irreplaceable dancing partner.

The principle adopted by Devlin, J. was that the damages must be such as arose out of the relationship of husband and wife and a loss which arose from an independent though co-existing business relationship was not recoverable. The reasons by which this conclusion was reached reveal a wide area of freedom from liability for the consequences of negligent behaviour. His Lordship pointed out that any death must have many repercussions of a financial character. Someone may derive financial advantage by stepping into the post vacated by the deceased. Someone in his business to whom the good will of the deceased was a valuable asset may suffer. But the law must necessarily limit the scope within which it allows recovery or there would be no end to the compensation which would have to be paid as the result of some quite small accident. Nor do these considerations arise only in regard to a death. Reference to *Best* v. *Samuel Fox & Co. Ltd.*[4] disclosed that their Lordships in that case had taken for granted that, for example, a servant could not recover in respect of injury to his master with consequent disruption of the business and financial loss to employees. Devlin, J. considered therefore that it would create an anomaly if so wide an interpretation were given to the Fatal Accidents Acts as to allow recovery where business associates happened to be husband and wife and business loss was caused to the husband by the death of the wife.

Further consideration of these situations and others of a similar character

[3] (1955) 1 Q.B. 349. [4] (1952) A.C. 716 (H.L.).

would, it is believed, reveal an extensive patchwork in the law dealing with the financial consequences of negligently caused physical accidents. Even where the party who suffers the financial loss is also the party who suffers the physical injury the courts have shown a tendency to limit the loss in some directions. The familiar *Liesbosch Dredger* v. *Edison*[5] is an illustration in which an enhanced business loss due to the inability of the wronged person to mitigate his damages thanks to his own impecuniosity was treated as too remote. Moving to the field of third party financial losses, we find that even a husband, whose action for injuries negligently caused to his wife is well recognised, may have difficulty in recovering his full financial loss because of a tendency to limit what is involved in the notion of consortium. The wife has no action against a person negligently injuring her husband at all,[6] though she may well suffer financial losses against which the husband's own award of damages may not fully protect her. And the same applies to children suffering financial losses due to injuries to the parents.[7] Where a master suffers financial loss as a result of injury to a servant, parallel difficulties arise as in the case of a husband seeking damages for loss of consortium. Just what is the "*servitium*" for the loss of which he is entitled to compensation,[8] and, again, what technical limitations will be placed upon the circumstances in which the relationship is considered to arise ? The Crown has recently been denied a remedy in respect of loss of the value of the "services" of certain government officers.[9] In some cases the financial loss to a third party may be caused to one not in a continuous business association with the party suffering the physical injury. Knowingly to cause a breach of contract by injuring a party to it is actionable, negligently to do so is apparently not.[10] Loss may moreover be caused to a party in contractual relations with the deceased without any breach of it, as in the case of an insurance company the liability of which under its contract is enhanced by the negligent act. Here the matter is disposed of by the rule that there is no subrogation in life insurance contracts. Perhaps a part of the same general picture, though less obviously so, are the rules relating to contribution of indemnity between concurrent tortfeasors. The effect of the common law rule was that where A recovered against B for an injury negligently caused by B and C, B was usually unable to recoup his financial loss or any part of it arising out of the accident from C. Yet, even in jurisdictions which have not adopted contribution legislation there seem to be increasing examples of indemnity being allowed against the wrongdoer considered most in fault, even though there is no contractual relationship between the party to be indemnified and the party against whom the indemnity is being sought.[11]

It seems evident that we should not rest content with an explanation of this highly complex picture merely in terms of the view that the law must stop somewhere in its recompense in respect of claims arising out of accidents, or even in terms of the proposition also referred to by Devlin, J. that many of these losses are unforeseeable. Additional problems appear to be involved, as, for instance the extent to which recognition of some of the above claims would permit double recovery, and the extent to which financial losses should be catered for by the insurer of the business injured or by

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[5] (1933) A.C. 449 (H.L.).

[6] *Best* v. *Samuel Fox & Co. Ltd. supra* n.4.

[7] See J. G. Fleming, *Law of Torts* (1957) 677. Or *vice versa* unless the parent happens to be also the master in which case loss of services is compensated. *Id.* at 676-677.

[8] See e.g., *Chelsea Moving & Trucking Co. Inc.* v. *Ross Towboat Co.* (1932) 182 N.E. 477 (Mass.) refusing to reimburse master for wages he was bound by contract to pay the injured servant during absence from work, on the ground that this financial loss was not comprehended in the notion of loss of services.

[9] *A.-G. for N.S.W.* v. *Perpetual Trustee Co. (Ltd.)* (1955) A.C. 457 (P.C.).

[10] Fleming, *op. cit.* 717-718.

[11] See e.g., *Crawford* v. *Blitman Construction Corp.* (1956) 150 N.Y.S. 2d. 387 (New York).

the consumer of its products rather than by the insurer of the wrongdoer. It may be suspected that the growth of accident liability insurance will focus increasing attention on these problems.

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The Law of State Succession, by D. P. O'Connell, *Cambridge Studies in International and Comparative Law*, Number V, Cambridge University Press, 1956, xl and 435 pp., with Tables of Cases, Treaties and Statutory Instruments, Appendix, Bibliography and Index. (£3/4/9 in Australia).

This new work on the principles of international law governing succession somehow falls short of the expectations aroused by the author's earlier articles on certain topics of succession in the *British Year Book of International Law*.

First and foremost, this is not, as anticipated, a complete and comprehensive monograph on Succession. The actual text written by the author amounts to but 280 pages. The subject can be dealt with fully and adequately only in a volume or volumes of not less than double this size.

Second, even within the limits of what the author has tackled, there are serious deficiencies, if not gaps. Chapter IV, dealing with the problem of succession affecting multipartite treaties and membership of international organisations, merely touches the surface; indeed the actual length of the Chapter is only six pages. There is no evidence in this Chapter of utilisation of the important material contained in Dr. C. W. Jenks' fundamental article "State Succession in respect of Law-Making Treaties".[1] It is surprising that Dr. Jenks' article is not even cited. Another example of inadequacy is that of the two Chapters, Chapter XVII and Chapter XVIII, dealing with the effect of changes of sovereignty over territory on the nationality of the inhabitants. The author does not, apart from other matters, even deal with the point made by several writers on the topic that the predecessor State is under a duty to withhold its nationality from inhabitants in the territory of the successor State.

Furthermore, having regard to the fact that this is a new treatise published in 1956, it is not unreasonable to wonder why a special Chapter was not included, dealing with succession as between international organisations.[2]

In this connection, it is fair to say that the scope of the book appears restricted to the consideration of successor entities who are States, irrespective of whether the predecessor be a State or a dependent or semi-dependent non-State entity. So much is indicated by the title "State Succession", although in the first sentence of his Preface, the author says that the object of the book is "to inquire into the legal principles governing the consequences of change of sovereignty". But the author hardly treats the other or reverse aspect of change of sovereignty, that is to say, where the predecessor is a State and the successor is a non-State entity, dependent or semi-dependent.

Two other general matters may be referred to.

The author has not adopted a uniform method of treatment and arrangement. The book is divided into four Parts. In Part I, the topic of succession as to treaties is considered; this is more or less on orthodox lines. However in Part II, there is a switch; succession as to private law obligations, concessions, contracts, debts, pensions, &c., is treated as a particular application of the general doctrine of acquired rights. In Parts III and IV, there is another

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[1] *British Year Book of International Law* (1952).

[2] I.C.J. Reports (1950) 79.