I am honoured to have been invited to deliver this address. Chief Justice de Jersey proposed that I speak on a topic related to *Donoghue v Stevenson*. I assume that, in deference to my great age, he selected a case that even I would be likely to remember. Perhaps also there was an element of patriotism. Lord Atkin was a native of Queensland; a fact rarely acknowledged in commentaries on the law of negligence. I decided to discuss the case itself, and a couple of themes that flow from it.

*Donoghue v Stevenson* was the most influential common law decision of the 20th century. It raised a question of law argued upon assumed facts that were never litigated. It was decided in the House of Lords by a 3-2 majority. One of the majority judgments, that of Lord Atkin, is probably the most celebrated in modern legal history. Another, that of Lord Macmillan, is equally powerful. Nobody looks at the minority judgments, but that of Lord Buckmaster is worth attention for two reasons. First, it is a strong statement of the legal approach the majority had to contend with. Secondly, it predicts, accurately, difficulties that were likely to arise from the principle stated by the majority. To this day, those difficulties have not been satisfactorily resolved. They show, not that the decision itself was unsound, but that the law of tort is an imperfect instrument of justice. I will come back to them.

The appellant is described in the heading of the case as a pauper. In the Scots tradition, she was identified in the legal proceedings both by her maiden name, M’Alister, and her married name, Donoghue. The facts that she alleged about her encounter with some contaminated soft drink are too well known to need repetition. One form of harm she claimed to have suffered was shock. She also alleged physical injury, which was just as well, because in 1932 the common law on the matter of “nervous shock” had a long way to go. When I was a final year law student at Sydney University, I had a disconcerting encounter with Chief Justice Evatt, then Chief Justice of New South Wales, who wanted the Sydney Law Review to publish an article to the effect that his dissenting High Court judgment in *Chester v Waverley Corporation*, in 1939, had been vindicated by the House of Lords in 1961 in the case of *The Wagon Mound*. The *Sydney Law Review* declined to take up that invitation. Lord Atkin’s biography quotes a letter that Justice Evatt wrote from the High Court in March 1933, congratulating Lord Atkin on what he described as the *Snail Case*, which he said was the subject of

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4 A speech delivered at the Supreme Court of Queensland, Brisbane, 30 May 2012.
1 [1932] AC 562; [1932] UKHL 100.
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