Current Legal Periodicals

Delegated Legislation: Some Recent Developments. By J. A. G. GRIFFITH. 12 Modern Law Review: 297-318.

"In this paper the principal developments discussed are the work of the Select Committee of the House of Commons on Statutory Instruments, and the growth of the consultative method with particular reference to the National Insurance Advisory Committee."

The functions of the Select Committee on Statutory Instruments are first considered. Statutory instruments can be regarded from two standpoints: first, their likely effect and merits, and, secondly, whether they are the type of instrument the legislature intended or expected to emerge. From either of these standpoints members may speak when the instrument has been laid before Parliament. When the parent act has been fully debated and passed in the House, to consider the merits and policy of a large number of instruments would be to defeat the purpose of delegation. Thus in practice, with the occasional exception, parliamentary approval is granted the instrument without discussion.

The purpose of the Select Committee is to consider the formal or constitutional aspect of an instrument, and determine whether the attention of the House should be directed to the instrument because "It imposes charges, is not open to challenge in the courts, appears to make unusual or unexpected use of the powers conferred, purports to have retrospective effect when the parent statute confers no such express authority, that there has been unjustifiable delay in publication or in laying before Parliament or in notifying the Speaker in accordance with the Statutory Instruments Act 1946, or that for any special reason its form or purport calls for elucidation".

The Committee's paramount duty is to see that a Minister keeps within the powers conferred on him by the parent Act. The object of the Committee is to save members the insurmountable task of reading all instruments coming before the House.

From the time of its origin in 1944 until the end of the 1947-

48 session, the Committee had examined 3,200 instruments. Of these, the attention of the House was drawn to sixteen instruments which appeared to make an unusual or unexpected use of the power conferred. In addition the Committee has drawn attention to seven instruments calling for elucidation, and to thirty-two instruments where the publication or laying before Parliament appeared to have been unjustifiably delayed.

The Committee's influence can be ascertained from its Special Reports. In its seventh report, the Committee drew attention to thirteen instruments the publication of which appeared to have been unjustifiably delayed. These decreased steadily until none appeared in the fifteenth to twenty-first reports.

In addition, the Select Committee has rightly urged consolidation of over-amended instruments and the use of short descriptive titles.

Summing up, the very existence of the Committee has tended in large measure to act as a preventive to the shortcomings it is set up to detect. The greater the power that is ever increasing out of necessity in the modern state, the greater the need to make certain it is utilized only in the manner authorized. At present there remains unanswered the question whether or not the Committee can effectively handle the ever-increasing number of instruments.

The article next deals with the statutory requirements on consultation of interests. "Government by consent has always, no doubt, depended to some extent on Parliamentary representatives". This procedure becomes more important when considering delegated legislation, since Parliamentary consideration will not automatically follow.

The old practice, found in the Rules Publication Act, 1893, required that the proposed rules should be published forty days before they were to come into effect, and that representations made by any public body should be heard. The modern practice is to go direct to the interests concerned, hear their views, then draft the rules on that basis. Today the general requirements of the old practice are definitely laid down in a number of acts. There are two ordinary types of statutory requirements: first, that individuals affected shall have an opportunity of stating their case to the rule-making authority; second, that the Minister will consult specific interests.

In some cases, the Act specifies which interests are to be consulted. The Minister in such cases may be required to consult statutory advisory bodies, representatives of those likely to be

affected, or local authorities, before making the instrument.

Another type of consultation requires the approval of a statutory body. "Under a few recent statutes, regulations have to be submitted to a statutory body by the Minister, and the report of that body laid before Parliament." Thus the Minister must accept any amendments recommended by the body or be prepared to defend his refusal to do so in Parliament.

The most important Act of this type is the National Insurance Act, 1946. People in every walk of life have been affected by it, making the number of categories of interest too large for representation on any committee. The problem has been overcome by selecting a committee of representatives from employers, workers, friendly societies, and the appropriate Northern Irish authority. In addition, a former President of the Society of Medical Officers of Health in Scotland, a well-known administrative lawyer, an alderman and the warden of a college residence for women make up the other four members of the Committee.

The function of the Committee is to give advice and assistance to the Minister in connection with his duties under the Act. Before making a regulation, the Minister must usually submit a draft to the Committee. The Committee, after hearing any objections, makes a report to the Minister, on the strength of which he makes the regulation or draft regulation. This is then laid before Parliament with the Committee's report and the Minister's statement, "showing the amendments made by him since the Committee's report, the effect of the Committee's recommendations, and the reasons for not adopting any particular recommendation".

Not only does the Committee receive written representations, but it can also hear oral evidence. It has adopted the laudable attitude that it is a policy-recommending body, and as a result its reports are of the greatest value and interest.

Of the seventeen sets of regulations examined between November 1947 and June 1948, the Committee recommended amendments of varying importance in all but one set. In every case, the Minister accepted their regulations, and on a number of occasions undertakings were obtained from the Minister, on the strength of which amendments were not recommended. The liaison between the Ministry and the Committee must be close if the system is to work satisfactorily.

The question of the Committee's value as consultative machinery is considered. The department could have conducted similar inquiry but "it seems reasonable to assume that a carefully picked lay committee — 'lay' in the sense of not being composed of

departmental officials — will be able more accurately to discover weaknesses in the regulations and more able to assess the value of objections". It is most important to remember that the Committee is far more than a hearing body which merely weighs evidence and evaluates objections; it frequently makes recommendations based simply on its own knowledge, and all its recommendations are finally its own, however impressed it may in fact have been by a particular representation. Its statutory origin gives it an independence and an authority of the greatest importance. Committees such as these, where the subject matter under consideration affects every citizen, gain considerably from having an independent status releasing them from departmental control.

This type of Committee represents a constitutional development made necessary by the increase in delegated legislation. Its purpose is not primarily to offer advice to the Minister but to act in a representative capacity, representative of persons affected by the proposal. Even when the subject-matter is general and the number of persons affected very large, a small, carefully chosen Committee can render invaluable service. When the deliberations of such a Committee as the National Insurance Advisory Committee "are added to those of the Select Committee on Statutory Instruments, working within its term of reference, the usual constitutional objections can hardly be sustained and the development of these two types of procedure seems likely also to solve the practical difficulties and dangers which attach to the delegation of legislative power". (D. W. HILLAND)

Restitution from an Innocent Transferee Who is not a Purchaser for Value. By GORDON K. SCOTT. 62 Harvard Law Review: 1002-1021.

In the United States the basis of the claim for restitution is unjust enrichment. There are two main classes of cases in which the claim arises: one where a transfer has been induced by a mistake, making the transaction different from that intended and the transferee had not given value for the property subject of the transfer; another where there is a legal or equitable interest prior to that of the gratuitous transferee. In the first case the mistake must be one of fact and not merely one of law.

The remedy in an action at law is for the value of the benefit received, but if this remedy is unobtainable, as where the transferee is insolvent, the plaintiff may in equity claim the property

itself, or, as where the property has been exchanged for another, he is entitled to the proceeds under a constructive trust.

The English courts hold that this principle lacks precision. Precedent, the technical approach to the problem, supersedes moral considerations. The case of *In re Diplock Estate*, [1948] 1 Ch. 465 (C.A.), is illustrative of the tendency of the English courts to make use of legal fictions in such situations. There the executors of an estate by a mistake of law paid out considerable sums to various charities. The next-of-kin upset the transactions and sought to recover from the charities. The mistake being one of law, the courts denied the existence of quasi-contractual liability, and, raising the fiction of the imaginary contract, said that even if the mistake had been one of fact, recovery at law would be unavailable, there being no privity in the imaginary contract. However, the court termed the action one in equity, holding that since the plaintiff had exhausted his claim against the executors, the charities were personally liable, whether the mistake causing the executors to make a wrongful distribution was one of fact or law, and the next-of-kin might trace the distributed funds or the proceeds thereof.

The fact that the money was mingled with the assets of the charities would be a bar to a tracing order being issued at law, but, the action being in equity, the court would apply the "first-in, first-out" rule to decide whether the mingled funds were Diplock or charity money.

The element of good faith on the defendant's part is important where he has changed his position as a direct result of his receiving the payment so that restitution would prejudice him. A fiduciary and a purchaser who has no right to believe that he has good title to the property has a duty to make restitution and cannot avail himself of the defence of detrimental change of position. Again, if a bona fide purchaser for value pays a person who has no authority to pass title he must bear the loss unless the true owner, the plaintiff, is by his conduct towards him estopped from claiming relief.

The effect of these subsequent transactions in which the purchaser has changed his position varies according to whether the transactions resulted in gain or in loss to him. Where he has altered his position, say by purchasing shares which at the time of his learning of the plaintiff's claim have decreased in value, he cannot be said to have received a benefit from the plaintiff and would therefore be free of the claim for restitution of the money received, provided always he proves that he would not have made

the investment but for the receipt of the money from the plaintiff. It would then be no answer to this defence to say that the defendant has had his money's worth of enjoyment.

In the event that an innocent defendant loses the money through carelessness on his part or theft, restitution should not be imposed. The basis of his liability is the benefit he retains at the plaintiff's expense and not the lack of care with which he treats property he believes to be his own. It would be inequitable to impose upon him a loss he would not have incurred but for the payment.

Take the case of a defendant who distributes the money received to a charity as a gift. Although he may be said to have retained a benefit by his altruistic act, had be known the facts he would not have made such a distribution, it being evident that to him the loss he must suffer if compelled to make restitution would far out-weigh any benefits he would have received. In such cases the court takes into consideration factors like the size of the gift and the means of the defendant.

If the defendant has become insolvent the plaintiff may be entitled to priority over the claims of the defendant's creditors and if the defendant is not an innocent one the latter may be required to trace the property into the assets now in the insolvent's estate and here the fact that the defendant has mingled the property with his own assets becomes of importance. To determine whether the plaintiff's money, which has become mingled, has been withdrawn from the defendant's bank account, the English courts apply the "first-in, first out" rule in *Clayton's* case (1816), 1 Mer. 572, while the American courts have adopted the "lowest-intermediate-balance" rule, giving the plaintiff priority by way of an equitable lien on the mingled account. This latter rule does away with many of the inconvenient results of the rule in *Clayton's* case.

If the defendant has not acted in good faith or knew of the plaintiff's interest when he received the money he is subject to the same liability to account as is a fiduciary, in the event that he derives a profit from the payment. If he is an innocent purchaser he is free of such liability. He is liable only to the extent that he unjustly retains a benefit at the plaintiff's expense. (G. E. VICKERS)

"What Says the Defendant?" By FRED S. BALL, JR. 10 The Alabama Lawyer: 281-289.

Your case, one in which an elderly farmer who, while walking on

the shoulder of a highway, was struck from behind and killed by a speeding automobile, alleged to have been driven by the agent of your client the defendant, has just been called. The plaintiff's attorney has announced "ready" and the judge has turned to you and in an unsympathetic tone has asked, "What says the defendant?"

Are you ready for trial? Have you done all those things a defence attorney must do before he can answer that question? Have you pleaded all possible grounds of demurrer, spoken to the witnesses and secured their presence in court, filed all necessary depositions, arranged witness statements in proper order, worked out your defence so that you will not fumble and hesitate, and prepared your written charges in proper form? Above all, have you studied that jury list?

You are somewhat on edge because, although not inexperienced at trial work, you have had setbacks in the past when unexpected developments have arisen. You can remember having felt better physically, and you feel that the jury may become prejudiced when they learn you are representing an insurance company and not the well-to-do citizen whom you are shown to represent on the record.

You have investigated the case thoroughly. The driver of the defendant's automobile, a car salesman, accompanied by a friend and an unknown woman, had been intoxicated the day the accident happened. He had denied the accident or having been in the vicinity where it occurred. But you learned that microscopic photographs showed that particles of the deceased's coat were embedded in a dent in yout client's car, proving that his was the car that had killed the old gentleman. You learned, too, that witnesses for the plaintiff had seen a car of similar description to the defendant's being driven recklessly before the accident. You had therefore recommended settlement, but plaintiff's attorney stood firm at a figure more than three times the amount you were authorized to pay.

How could you defend such a case? Suddenly you remembered the day you had gone fishing, and the old bass that had escaped you, not by running away, but by rushing straight towards you. You decided to use the same tactics in this case and calmly announced, "The defendant is ready, your Honour".

Plaintiff's attorney had apparently planned to prolong the case by spending several days in proving that the defendant's car had killed the victim, the salesman's speed and intoxicated condition, and, by this method, to impress the jury with the import-

ance of the case and so obtain a large verdict. But when, in reply to the opening speech for the plaintiff, you had admitted these facts, and concluded by saying that the suit was not against the salesman but against the defendant, who should not be held responsible for the reprehensible conduct of the salesman, the fight anticipated by plaintiff's attorney, and through which he had intended to work up the jury to a large verdict, had melted away, and he was forced to rest his case.

You had then examined the salesman and shown that he had not been engaged in his employer's business when the accident occurred; and before your opponent knew what you were up to, had shown that he, the salesman, had been indicted for manslaughter, a charge that had never been pressed to trial, despite the fact that the same solicitor who was now representing the plaintiff in the case at bar had been under a duty to do so; and that apparently, even though this was a case of almost deliberate killing of a pedestrian by a drunken driver, the plaintiff's attorney had been more interested in an attempt to collect money damages from the salesman's employer than in punishing the guilty driver.

The jury brought in a verdict for one third the amount you had offered in settlement before trial. The judgment was paid, and when you received a substantial fee from the insurance company you gave thanks to the old bass who had taught you what to do when the judge had asked, "What says the defendant?" (WILLIAM W. COGHLIN)

Some Aspects of Soviet Constitutional Theory. By A. NOVE. 12 Modern Law Review: 12-36.

The Bolshevik revolution was proclaimed thirty-two years ago. Recently, during the month of November 1948, the anniversary of that momentous event was celebrated in Moscow with impressive ceremonies. Mr. Nove's survey of Soviet constitutional theory provides the information the Western observer needs if he is to understand the nature of the unique political experiment in Russia that continues to engage the attention of mankind.

Rather than apply Western criteria of judgment, the author relies chiefly upon the explanation of the Soviet system of government found in the writings of Soviet constitutional theorists such as Vyshinski, Denisov, Yetikhiev and Vlasov, whose books on Soviet law are used as texts for law students.

The essential preliminary to a study of Soviet ideas on the

State, Law and Justice is some knowledge of the Marxist-Leninist terminology employed by all Soviet lawyers. The following concepts are accepted as axiomatic by Soviet writers in this field:

(a) "The State always has been and is a coercive apparatus with the help of which the ruling classes impose obedience on their 'subjects'." "The bourgeois State is an apparatus for the suppression and oppression of the toiling masses."

(b) The Soviet State, too, is an instrument of suppression, of "dictatorship", wielded by the working class in alliance with the peasantry, that is, by and in the interests of the mass of the people towards the building of Communism. There is no contradiction, in Soviet eyes, between the dictatorship of the proletariat and democracy, because the dictatorship is wielded by and for the vast majority, in their own interest, through the Communist Party which always represents their interests.

(c) As the State is an organ of class suppression, it follows that it must eventually "wither away" after classes are abolished.

(d) Laws are "forms by which the ruling class in the given society sets norms of behaviour for all other classes, according to what profits and suits that ruling class".

(e) Abstract justice in any ethical sense cannot be invoked as a basis of law. Justice is itself purely relative; under capitalism there can be only "capitalist justice", and Soviet justice as well as Soviet law must express the needs of a socialist transformation of society.

These theories produced in the twenties a school of thought which regarded the State and law as a transitional phenomenon and, in practice, during the period of the "liquidation" of the small trader and the individual farmer, legal restraints were brushed aside by administrative requirements.

The new and widespread tasks of the Soviet State, especially in the field of economic planning, required effective organization and effective obedience to the State authorities. A new degree of social stability had to find its reflection in the legal structure of the Union. Hence there occurred a reformulation of the official theory for, as Stalin put it, "the withering away of the State will not come through the weakening of the power of the State but through its uttermost strengthening, which is necessary for the purpose of completing the destruction of the remnants of the dying classes and to organize defence against the capitalist environment".

Strengthening the power of the state is to be accomplished "with the help of law and in accordance with measures strictly

defined by law through administrative and judicial organs", as Vyshinski's text-book states. Further, "the dictatorship of the proletariat, . . . does not entail anarchy or disorder; on the contrary, it entails strict order and firm government, acting on strict basic rules set out in the fundamental law of the proletarian State, the Constitution".

Thus the U.S.S.R. has its foundation in the rule of law and in a constitution. Its government is organized on the basis of an elected Assembly, the Supreme Soviet, which is divided into two Houses, (a) the Soviet of the Union, elected in proportion to the population by electoral districts; and (b) the Soviet of Nationalities in which the sixteen sovereign Republics of the Union have equal representation of twenty-five members each. The Supreme Soviet holds two sessions a year for a period of less than one week on each occasion. Between sessions, power is exercised by the Praesidium, which is a joint standing committee of both Houses, and by the Council of Ministers responsible to the Praesidium and to the Supreme Soviet. The law is under the administration of the Attorney-General, or Prokuror. The interpretation of the constitution and of the laws is the responsibility of the Praesidium.

The amendment of the Constitution requires a two-thirds majority vote of both Houses. This provision has not been of real importance because all voting in both Houses is always unanimous and, secondly, because on several occasions the Praesidium has, by decree, amended the Constitution and the amendment has taken effect before ratification by the Houses.

The U.S.S.R. is a voluntary union of national republics, each with its own Constitution. At international conferences Soviet delegates defend the principle of national sovereignty. How widely divergent are Western and Soviet views on the meaning of sovereignty may be observed by a study of the powers actually exercised by the so-called sovereign republics. Two examples will serve for illustration. Each republic has the formal right of secession from the Union (article 17). But the public advocacy of secession is a de facto criminal offence. Each republic has the right to maintain its own armed forces. Nevertheless, "the military formations of the Union-Republics will be component parts of the Army of the U.S.S.R. The whole Red Army will have a single set of regulations, a single mobilization plan, a single command."

The freedoms guaranteed by the Constitution are interpreted by Soviet jurists in the light of the nature and purpose of the

Soviet State. These freedoms may be subject to certain limitations. Vyshinski's text-book provides an example: "In our State there is not, and of of course cannot be, any freedom of speech, of the press, etc., for the enemies of Socialism". The Soviet jurist does not consider that these limitations in any way contradict his concept of democracy.

Soviet theorists strongly attack the theory of the separation of powers within the state and insist upon the supremacy of the elected representative assembly to which the executive and judiciary are subordinate. The basis for this attitude is that, in the Socialist State, there is no need to protect different sections of the community against the State, or one part of the State against another, for Soviet society is held, literally, to embody the General Will in Rousseau's sense.

The Communist Party, specifically mentioned in article 126 of the Constitution, "constitutes the directing nucleus of all toilers' organizations both social and governmental". Denisov writes that "the leading role of the Party permeates all Soviet life. The Party controls the selection, distribution and training of the personnel of the whole Soviet State apparatus and checks on the work of the organs of State and government. Not a single important decision is taken by the State organs of our country without previous instructions and advice from the Party."

The article also deals with the functions of the Supreme Soviet, the Praesidium, the Council of Ministers, and with Electoral Procedure, the Judiciary and the Political Police, the powers of the Prokuror and the citizen's means of redress against the Administration.

In conclusion Mr. Nove states that the Soviet theory of State and Law follows logically enough from the premises on which it rests. If "the Party embodies the desires and yearnings of the people" then the constitutional forms which give the most efficient expression to the Party's policy represent a perfect form of democracy. If "there can be no conflict in Soviet society between law and morality because both represent the ideology and outlook of the whole monolithic Soviet society", then Soviet law axiomatically represents the General Will of the people. If the interests of the State in the Soviet classless society must always be identical with the interests of the individual, then the omnipotence of the State, and of the Party, is in itself a "guarantee of the maintenance of the interests of the individual".

The danger that threatens society when absolute power becomes vested in an individual or in a few persons has been a

subject of comment by historians and political theorists for centuries. As the Western constitutional lawyer sees it, the Party may become corrupted, as others have been before it, or its leaders may come to identify the furtherance of their own power or privileges, or considerations of administrative expediency, with the interests of the people. Absolute power, in the nature of things, is liable to be abused, and Soviet constitutional theory and practice seem to be well fitted for abuse. (G. M. CHURCHILL)

Social Insurance and the Principles of Tort Liability. By W. G. FRIEDMANN. 63 Harvard Law Review: 241-265.

In the last quarter century there has been a great advance of social security measures, ranging from pensions and unemployment and accident insurance to public health services. Of the common law countries, it is in Britain that this trend has gone furthest. Naturally this increase in social insurance has affected liability in tort. English legal developments in this period have shown a give-and-take between the judicial absorption and the systematic Parliamentary adoption of these new ideas. Although the English judiciary took the initiative in adjusting the law of tort to the new principles, it has now adopted a more cautious attitude.

There have been numerous developments. The law on manufacturer's negligence has been subject to the impact of *Donoghue* v. *Stevenson*, [1932] A.C. 562. Now, the manufacturer of dangerous substances (almost any substance can now be dangerous in certain circumstances) owes a duty of care to any potential consumer, and he is liable for any negligence in its manufacture. Where a manufacturer apportions the process of manufacture among various sub-contractors his liability is extended to harm caused by their work on the finished product. Finally, a manufacturer may now be responsible for his product notwithstanding that there was opportunity of inspection by a third party before consumption. The liability of a principal for the torts of an independent contractor has been greatly extended, indicating the growth of the idea that an injured person shall no longer suffer from the intervention of internal business arrangements but shall be able to hold liable the person who has general control of the enterprise.

The evolution of the action of nuisance has resulted in the general principle that the occupier of property is liable in tort for any damage he foresaw or might reasonably foresee. This ties in

with the gradual widening of liability under the rule in *Rylands* v. *Fletcher* (1868), L.R. 3 H.L. 330. There has been an extension of the notion of "things likely to do mischief". Formerly "natural user of land" meant a purely agricultural user. The courts, however, have extended the term to "ordinary user", *i.e.*, such a use as is proper for the general benefit of the community, which today would include industrial user. But liability still arises from special industrial activities that even today would not come under "ordinary user". Ownership of land is no longer a condition of the rule, occupation both by the plaintiff and the defendant is now sufficient. There has been no modification, however, of the strict application of the concept of "escape" under the rule.

These developments appear to be leading to the establishment of a broad principle of legal responsibility towards the public flowing from the control of property.

The rules concerning occupiers of dangerous premises have also been extended. Stricter standards are now imposed where children are on the premises and the idea of "actual knowledge" being a condition of liability towards bare licensees has now been extended to include "means of knowledge".

Certain of the principles of tort remain unchanged: for example, the rule that exempts the seller or lessor of a dilapidated house from any liability in tort for fitness of the premises; and the rule that shows the strict liability of a landowner for a trespass of his animals on his neighbour's land, while he is in no way liable for injury to the public as a result of his animals escaping from his land to the adjoining highway.

The development of common law liabilities and the modern statutes have increased the social security of employees. The decision of the House of Lords in *Wilsons & Clyde Coal Co., Ltd.* v. *English*, [1938] A.C. 57, set down a three-fold common law duty of the employer towards his employees, which left few cases of accidents occurring during industrial employment where the employer was not liable. The employer is not liable under the *Wilsons* case for an accident he could not reasonably have foreseen. The English courts have developed a policy of limiting certain legal rules, such as the defence of *volenti non fit injuria*, which are obnoxious to modern social conscience and public policy. An increasing number of employer's duties are regulated by statute and there is a tendency to construe these statutory duties against the employer.

Recently, the legislature in England, by a series of Acts, has aimed at an over-all insurance for the citizen. The relation be-

tween this social insurance and tort liability is outlined in the Beveridge Report. First, the scale of benefits under this new legislation is substantially below the amount of damages recoverable in a common law action. Second, in answer to the question whether it is justifiable to permit an injured person to recover both his social insurance benefit and common law damages it was recommended that he not be permitted to recover more than the maximum which he could recover from either source alone. The Law Reform (Personal Injuries) Act, 1946, hits a compromise and provides for half the benefits received under social insurance being set off against whatever damages the court might allow for personal injuries. Third, it having been recommended that civil liability in tort should exist legally, independent of social security, the problem arose how to distinguish between liability in tort and social security obligations.

The judicial reaction to this extension of social security in contemporary British legislation is one of caution. It is suggested that this caution is prompted by a desire to protect the law of tort from complete merger with the law of social insurance. The decision in the case of *Read* v. *J. Lyons & Co.*, [1947] A.C. 156, is a good illustration of this reaction. There the House of Lords refused to extend the rule in *Rylands* v. *Fletcher*, as regards the concept of "escape", to explosions occurring within the defendant's premises and injuring the plaintiff. The House of Lords strongly affirms the rule that the occupier of land adjoining a highway has no duty to prevent animals escaping onto it. This problem has become acute only since the advent of our various present-day fast-moving vehicles. Since the law of tort, as regards negligence, nuisance and trespass, has been adjusted so well to modern industry, it is suggested that it be brought up to date on the occupier of land as a keeper of animals.

Although they have not yet merged, the law of tort has become increasingly closer to the idea of social insurance. There is a greater degree of care imposed upon the manufacturer, the occuier of land, the controller of fast-moving vehicles, and his range of defences has decreased. Certain of the old rules remain, however, but they seem to be only an example of the desire of the courts to maintain the status quo. It has been suggested that over-all state insurance would do away with the law of tort. But the experience of socialized enterprise has shown that it may be necessary to strengthen the principle of fault in order to maintain the proper standard of conduct. (W. B. MACINNES)