FROM AN ENGLISH OFFICE WINDOW

Damages for Shock

By a gradual process the Courts have been developing a recognition of nerves capable of injury in the same way as limbs. In this they have been encouraged by the medical profession. Commenting upon the extraordinary case of *Owens* v. *Liverpool Corporation*, [1939] 1 K.B. 394, *The Lancet* (1938, vol. ii, p. 1492) observed: "As medical science has become better able to describe and classify mental and nervous systems the Courts have appreciated their significance. It is realized that a woman's nerves may be as much a part of her personality as her teeth or her limbs. The expert witness provides the proof of the nervous shock. The judges rules that the shock can be the consequence of the negligent act or to put the point in legal language, that the shock is not too remote a consequence to give rise to legal liability." Proceedings were taken against the Liverpool Corporation by mourners following a hearse into which one of the Corporation's tram cars was driven. The Court were satisfied of the negligence of the tram driver. The plaintiffs were quite indifferent about the welfare of the driver of the hearse but were shocked and disturbed at the dislodgment of the coffin containing the corpse of their relation.

This and several other cases have been recalled by an Edinburgh fishwife, Mrs. Bourhill, who deposited her basket by the side of the driver of a tram car on 11th October, 1938. With her back to the offside of the driver's platform she was being assisted to put her basket on her head just as a motor cyclist came by at an excessive speed. Forty-five to fifty feet further on he crashed into a motor-car and received injuries from which he subsequently died. The plaintiff made, from a psychological point of view, an embassassing admission that there was no instant of time in which she thought of injury to herself (*Bourhill* v. *Young's Executors*, [1941] S.C. 395). She claimed as a result of the shock she wrenched and injured her back and that her baby born on the 18th November was still-born, though evidence was not given in support of the possible effect upon her pregnancy. After the accident she had gone to the spot from which the body had been removed and was upset by the sight of the blood on the ground. In the Court of Session there was some discussion on the point whether the law of Scotland and England was the same. However, there was general doubt about the soundness of the decision in the Liverpool case and

argument that the executors of the dead cyclist could not be called upon to pay damages to Mrs. Bourhill. Nevertheless she, or someone acting on her behalf, proceeded to the House of Lords where Lord Thankerton, one of the Scottish Law Lords, delivered judgment and confined himself to the question of the range of duty of a motor cyclist on the public road towards the passengers. Admittedly Young was driving at an excessive speed but Mrs. Bourhill was not even in his line of vision as the tram car was between. The most that she could say was that the noise of the motor cycle had upset her, followed by the crash and the sight of the blood-stained road. His Lordship found with the concurrence of the other noble Lords that the cyclist had not failed to drive with such reasonable care as would avoid the risk of injury to such persons as he could reasonably forsee might be injured by failure to use such reasonable care (*The Times*, 6th August, 1942). So Mrs. Bourhill becomes the exception to a series of plaintiffs who have obtained damages for shock.

Incidentally it may be observed that present conditions are leading the medical profession to revise their ideas on the subject of shock. Large sections of the population have had to put up with a great deal worse than the noise of a motor cyclist smashing himself up against a motor car and even blood stains on the road. Yet medical evidence has been unanimous that there has been no signs of nervous breakdown still less of injury from shock. This applies to women just as much as to men. It rather suggests that the normally healthy person, though a pregnant woman may be an exception, is not susceptible to shock in a measure which justifies any claim for damages.

Uniformity of Legislation

The bulky volume of the proceedings of the Canadian Bar Association has just arrived in this country and I have been reading its contents with much interest. From a mass of valuable matter it is the report of the Commissioners on Uniformity of Legislation which I would select as having particular value for consideration at the present time. Is there not room for some similar body, Imperial in its scope? No doubt in our characteristically British fashion it would be voluntary in its constitution at the outset. There could be no idea of Commissioners with statutory appointments, but the proceedings of Imperial Conferences have shown that such a body might meet

with a favourable reception. War conditions provide a large number of examples of the extent to which at Westminster and in the Dominions similar, if not the same measures are required to deal with the safety of the people, trading with the enemy and a number of other subjects. In the building up of the nations after the war there is likely to be the same similarity. All have the Atlantic Charter as a basis. Legislation dealing with social security has many features common to the needs of all the peoples as the International Labour Organization has already recognized, even to the extent of providing draft legislative enactments. The good work being done in Montreal in that sphere might even provide an analogy for at least an Imperial advisory body in Ottawa to deal with other departments of law.

The late Duke of Kent

The tragic death of the Duke of Kent has deprived Lincoln's Inn of its Royal Bencher. It was that Inn which created the precedent for the election of members of the Royal Family though the first was only a special admission in connection with a Readers' Feast. There is reliable evidence that during the sixteenth and seventeenth centuries members of the Royal Family attended, generally incognito, the festivities of the Inns. But on 20th February, 1671(2) when Sir Francis Goodericke was Reader at Lincoln's Inn, King Charles II, the Duke of York and Prince Rupert, together with a considerable number of other distinguished guests, took dinners in the Hall. Towards the end of dinner, so the official record narrates, "his Majestie to doe a Transcendant Honor and Grace to this Society and to express his most gratious acceptance of their humble duty and affection towards him, was pleased to command the Booke of Admittance to be brought to him, and with his owne hand entered his Royall Name thereon most gratiously condescending to make himself a Member thereof, which high and extraordinary favour was instantly acknowledged by all the Members of this Society there attendant on his Majestie with all possible joy and received with the greatest and most humble expressions of gratitude, itt being an example not presidented by any former King of this Realme."

The occasion of a member of the Royal Family being not only admitted but also made a Bencher was at the opening of the new Hall and Library of Lincoln's Inn by Queen Victoria in 1845 when the Prince Consort was admitted to membership

and afterwards elected a Bencher. There was clearly some discussion with the Queen's advisers about her position as the record states "that there was no objection on the part of Her Majesty to follow the precedent of Queen Elizabeth" who paid visits to Gray's Inn.

The death of the Duke of Kent, however, raises in a definite form the relation of women to these honorary positions. The King is an honorary member of the Inner Temple and the Duke of Gloucester at Gray's Inn. The work which falls upon them is very heavy and in other walks of life the women members of the Royal Family are taking a valuable part. It would be a graceful act, not without international significance, if the Benchers of Lincoln's Inn elected the Duchess of Kent as an honorary bencher. It may be thought that the precedent should be created in favour of the Queen and, but for the war, there is good reason to believe that would have been done and so crowned the position of women at the Bar.

Long Vacation

The Long Vacation has had a chequered career. Picking up a calendar of a hundred years ago I noticed that term began on 3rd November and ended on the 26th. The present Long Vacation from 1st August to 11th October was fixed at the beginning of this century and, in normal times there are advocates of shortening it. War conditions have created difficulties. In 1940 Vacation in the Supreme Court was suspended altogether, though there was a reduction in the number of sittings. In 1941 it was not suspended but more or less urgent cases could be entered in the lists. This year there was a flexible arrangement which enabled the Lord Chief Justice and the Senior Judge of the Chancery Division to make arrangements according to requirements. The Court of Appeal has been available for ten days. The fact of the matter is that there is neither the business nor are the members of the Bar available for anything like a continuous sitting. Peace-time holidays are not available but relaxation and change of occupation in different surroundings have freshened up the legal profession and their staffs for the coming winter, and whatever it may bring to them. The number of actions set down for hearing on the common law side shows some increase but this is probably only temporary. The reduction in civilian transport to a mere fraction of the normal is bound to have a considerable effect upon the number of "running down" cases which constitute a con-

siderable proportion of the normal work. It has been estimated that the legal profession derives something like seventy per cent of its income from claims arising out of personal injuries. On the other hand divorce proceedings still continue to show an increase though a substantial number are instituted under the poor persons' rules.

The Electro-encephalograph

The use of the electro-encephalograph in a recent murder trial has drawn attention to the value of this instrument in securing justice to the accused. So far it has only been used in quite a small number of cases, and this was only the second time in a murder case. The instrument amplifies and graphically records the minute electrical currents that occur in the brain. The circumstances of the case and the observation by two non-medical witnesses suggested that the prisoner was an epileptic. Prolonged clinical observation in the prison infirmary provided no corroborative evidence. The encephalogram however, came to the rescue. It is unanimously agreed by neuro-psychiatrists that a particular wave form capable of being recorded is proof positive of epilepsy, although there may be cases of epilepsy which do not show the particular wave form. The result was that the jury returned a verdict of guilty but insane. The facts as recorded in "The Times" have been endorsed by the eminent psychiatrist, Dr. Crichton Miller, with the proviso that a victim of "petit mal" should not be committed to a criminal lunatic asylum even if it is necessary to describe him as insane when he is not so in any scientific sense of the word. Thus the electro-encephalograph may save a man from being hanged for a crime of which he was not even conscious. The plea is accordingly put forward that the use of an electro-encephalograph should be allowed at the public expense in serious cases if the doctor certifies that there is a *prima facie* case for suspecting epilepsy.

MIDDLE TEMPLAR.