Around the Courts

Prospects of Re-Marriage

In two cases recently before the courts the question has been raised as to whether a widow's prospects of re-marriage should be taken into account in assessing damages. In Buckley v. John Allen & Ford (Oxford), Ltd., the plaintiff's husband, aged 35, was killed in a motor accident in respect of which the defendants admitted liability. The widow, aged 38, brought an action for damages on behalf of herself and her four children. The defendants submitted that in assessing damages deductions should be made in respect of rent of rooms in the matrimonial home which had been sub-let, and in respect of the widow's prospects of re-marriage, about which she was not asked when she gave evidence.

The court held that no sum should be deducted for the rent of the rooms the plaintiff had sub-let as the damages awarded should be of such amount as would restore the widow to the position at the deceased's death. As to the prospects of re-marriage, no deduction would be made, said Mr. Justice Phillimore, and in the absence of statistics on re-marriage of widows he doubted whether any judge is qualified to assess the likelihood of re-marriage. He further suggested that it is time judges were relieved of the need to enter this particular guessing game. (1967) 1 All E.R.539.

The other case was Miller v. British Road Services, Ltd., and Others, where the plaintiff was a widow aged 42 whose claim for damages on behalf of herself and two children arose out of her husband's death in a motor accident for which B.R.S. were held wholly liable.

In assessing the quantum of damages, the judge (Mr. Justice Waller), who did not set out his precise method of arriving at the final figure of £11,000, took into account the possibility that the widow, whom he described as "a very good-looking woman", might re-marry contrary to her present intention. Other factors were also taken into account, including the fact that inflation of the currency is constantly occurring. (1967) 1 W.L.R.443.

Improperly Dressed

In Lovelidge v. Anselm Olding & Sons, Ltd., the plaintiff was a mason whose jaw was fractured when his tie caught in the revolving shaft of a grinding machine. In a claim for damages against his employers the court held that the employers were in breach of reg.42 of the Construction (General Provisions) Regulations, 1961, because the shaft was a dangerous part of machinery and should have been fenced. But the real cause of the accident was that the plaintiff was improperly dressed. The employers were at fault for not correcting it earlier,

but the plaintiff behaved stupidly in not taking the elementary precaution of sticking his tie in a position of safety. Accordingly, liability was apportioned at fifty per cent on either side. (1967) 1 All E.R.459.

Escaping Fire Destroys Hedge

When fire broke out in a yard owned by Levy Auto Parts (of England), Ltd., it destroyed a 12' laurel hedge, trees and shrubs in the adjoining garden owned by Captain Mason. In the ensuing action, Mason v. Levy Auto Parts (of England), Ltd., two questions had to be determined by the court: (1) Did the firm bring to their land things likely to catch fire, and keep them there in such conditions that if they ignited the fire would be likely to spread to Captain Mason's land? (2) If so, did the firm do those things in the course of non-natural user of the land?

The answer to both questions was in the affirmative. At the time of the fire the yard was full of wooden cases and machinery coated with grease or wrapped in waxed paper. Petroleum, acetylene and paints were also stored there. Having regard to the highly combustible nature of the materials and the manner in which they were stored and the character of the neighbourhood, Mr. Justice MacKenna had no difficulty in finding that the defendants' user of their land was a non-natural one. There was expert evidence to the effect that the loss of the hedge, which might take ten years to grow again, had seriously depreciated the value of the property. Damages of £852 were awarded with costs. "The Times", 2 March, 1967.

Third Parties (Rights against Insurers) Act, 1930, s.1 Invoked

In Post Office v. Norwich Union Fire Insurance Socy.,Ltd., a workman of Potter & Co.,Ltd., damaged a Post Office cable in the course of carrying out street works. The firm was insured under a public liability policy issued by the Norwich Union which provided indemnity 'against all sums which the insured shall become legally liable to pay'. Potter & Co.,Ltd., went into liquidation and the Post Office brought an action against the insurance company under the Third Parties (Rights against Insurers) Act, 1930, s.1. The Court of Appeal (reversing the decision of the court of first instance) held that the Post Office could not as yet invoke s.1 of the 1930 Act as Potter & Co.'s liability was not established. Moreover, any admission of liability by Potter & Co. to the Post Office could not establish liability as against the insurers since Condition 3 of the policy provided 'that no admission offer promise payment or indemnity shall be made or given by or on behalf of the insured without the written consent of the insurance company'.

Lord Denning, M.R., said that the correct procedure is for the

Post Office to sue the wrongdoer and as the wrongdoer is a company leave of the court must first be obtained. The insurance company can then defend the action in the name of the wrongdoer and so liability can be established and loss ascertained. At this stage, but not before, the Post Office could proceed against the insurers.
(1967) 1 All E.R.577.

Rhodesian Tobacco Damaged

In Sleightholme Farms (PVT) v. National Farmers Union Mutual Insurance Society, tobacco leaf was insured against damage by storm and the policy contained a provision which was a condition precedent to recovery that the insured should 'on the happening of any occurrence giving rise to damage, within 15 days of the occurrence or such further time as the Society may in writing allow, deliver a claim in writing ...' The leaf became wet as a result of a storm in March, 1965, and was subsequently damaged by burning, but was not discovered by the insured until June, 1965. Notice was then given forthwith to the insurers. The plaintiff's claim was dismissed, the court holding that the "occurrence" was the storm and that the time within which notice must be given ran from then; that the conditions of time were conditions precedent and the plaintiff had failed to comply with them; that the courts would always uphold a condition in a contract seriously entered into, however unreasonable or capricious it might appear to be; and that, regard being had to the provision for granting further time, the condition was in any event not capricious or unreasonable.
(1967) (1) S.A.13, Rhodesian High Court.

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