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Bulletin No. 14March, 1968"A Critical Look at the Motor Car Policy"

This will be the subject dealt with by Mr. G. L. Bateson, A.C.I.I., at the next meeting of the Association on Tuesday, 23 April. It is hoped that this will be of interest to all our members and we trust that you will do your best to be present on this occasion. The meeting will be held at Aldermay House, Queen Street, London, E.C.4, and will commence at 6.30 p.m. Coffee will be served from 6 p.m. We are favoured with an imposing venue and we would like to see the comfortable and contemporary conference room which has been placed at our disposal well filled for this meeting.

"Tax Law after the Budget"

This is a subject of importance to all our members, and we have been fortunate in securing Professor G. S. A. Wheatcroft to speak to us on this topic on Tuesday, 21 May. Further details of this meeting will be circulated to members nearer the date, but in the meantime you may like to note it in your diary. The time and venue will be the same as for the meeting on 23 April.

Luncheon Meeting

After a successful luncheon last autumn, the Committee have been encouraged to arrange a further luncheon meeting on 20 June, when the speaker will be Mr. P. C. Wickens, Actuary to the City Mutual Life Assurance Society, from Sydney, Australia. This is an advance notice and further details will be circulated to members nearer the date. However, as places will be strictly limited, any member wishing to reserve a place now should get into touch with the Hon. Secretary.

Reports on Meetings

Three meetings have already been held this year. On 9 January Mr. K. W. Chetwood of the Estate Duty Office addressed us on "The Estate Duty Scene" and we are pleased to be able to reproduce the substance of his talk in this issue of the Bulletin. On 21 February Mr. Oliver Popplewell talked to the Association on "Some Aspects of

Damages", and on 26 March Mr. C. M. Stewart addressed a meeting of the Association on "The Harmonisation of Legislation in Europe, with particular reference to life assurance and specialisation. We hope to provide some notes on this lecture in the next issue of the Bulletin.

#### Paris Congress, 1970

As reported in our last Bulletin, working parties have been set up to prepare submissions on the two themes to be considered at the A.I.D.A. World Congress to be held in Paris in April, 1970. Messrs. H. A. L. Cockerell and W. T. Green have been appointed Secretaries for Themes I and II respectively, and any members who wish to participate or contribute to the deliberations of these working parties are invited to get in touch with one of the Secretaries mentioned above.

#### Observations on Memorandum No. 5 of the Scottish Law Commission

The Scottish Law Commission invited this Association to submit views on its Memorandum No. 5 on the subject of damages for injuries causing death. A small working party duly produced a suitable memorandum which was sent to the Scottish Law Commission, together with a covering letter to make clear that the memorandum represents the views of the working party which are not necessarily shared by the Association as a whole, nor do they represent the views of the insurance industry. Copies of these memoranda can be obtained on application to Mr D. J. B. Gatenby, Zurich Insurance Group, Fairfax House, Fulwood Place, High Holborn, London, W.C.1.

#### A.I.M.I.C. Conference

An interesting conference, in which our Chairman is taking part, is being organised by the Association of Insurance Managers in Industry and Commerce and will take place at Vickers House, Millbank Tower, London, S.W.1, on Wednesday, 22 May.

The lectures and discussions will be on risk management (Mr. W. Horrigan, Department of Industrial Economics, Nottingham University), the settlement of liability claims (Mr. Rex Wyeth), planning and maintaining fire safety and protection in industry (Mr. Marcel C. Tissot, Director, European Technical Division, American International Underwriters, S.A.), and the organising and managing of an insurance department in industry (Mr. E. A. Maurer, Nestlé Group, Switzerland, and Mr. P. H. Liechti, De La Rue).

The conference fee is five guineas, and all enquiries should be made as soon as possible (and in any event not later than 24 April) to Miss Dorothy Crowhurst, De La Rue House, 84-86, Regent Street, London, W.1.

New Zealand Royal Commission on Accidents

A Royal Commission in New Zealand has been considering a unified scheme for disability without demarcation by the cause of disability. The Commission recommends that anyone injured from whatever cause - machinery, motor car or slippery stairs - should be compensated from a special social security fund on the basis of 80% of his previous (tax paid) income while he is totally incapacitated. Housewives, who should be eligible for compensation because they support the work force, should be compensated from the 15th day. Permanent disablement should receive permanent compensation (as it does in Britain under the industrial injuries scheme) according to the severity of the injury, so that a person is not discouraged from overcoming his handicap and returning to work.

Further, the Commission recommends - this is relevant to Britain - that all common law actions for accident damages should then cease. They are chancy in their results, both as regards liability for an accident and even more in the damages awarded; they are extremely expensive, in the time of expert witnesses like doctors, and in money, which in legally aided cases is the taxpayer's; and they often cause compensationitis, which prevents an injured person from recovering until his action is settled one way or another.

Members may like to refer to "The Economist" dated 23 December, 1967, p.1209, for other comments on this report.

Lloyd's List Law Reports: Digest No. 12 (1961-1965), price £12. 12s. post free from The Subscription Manager, Lloyd's Shipping Publications, Lloyd's, Lime Street, London, E.C.3

Many of our members and others interested in insurance law will be indebted to Messrs. H. P. Henley, a former editor of Lloyd's List Law Reports, and E. S. Mathers, the present editor, who have compiled the current Digest. Although Lloyd's List Law Reports are provided with an index at the end of each volume, the preparation periodically of a Digest obviates the inconvenience of searching through the index to each volume.

This Digest, which is larger both in size and scope and more comprehensively cross-referenced than any of its predecessors, fulfils a dual role in that, as well as being a key to Lloyd's List Law Reports from 1961 to 1965, it is a case book of commercial and maritime legal decisions over the five-year period. As such a case book, it is complete in that the summary of each case incorporates the facts and the contentions of the parties, followed by the reasons for the decision.

Digest No. 12 contains such new headings as Banking, Copyright,

and Hire Purchase, to name a few, and the Contents of the book incorporates, in addition to the name of the case, the name of the ship concerned by which the case is often more popularly known.

It is sometimes said in defence of the wording of insurance policy contracts that many of these terms have been tested in a court of law, and a helpful part of this Digest is an index to words and phrases on which judicial pronouncements have been given in the cases covered by the Digest.

The customary list of salvage awards during the period 1961 to 1965 is also included in this volume.

### Around the Courts

#### Not a Perfect Compensation

A 56-year-old quantity surveyor was injured when the defendants' lorry travelling on the wrong side of the road came round a bend and ran into his car. He claimed damages for severe personal injuries which had affected his brain and meant that after about three years he would have to enter a mental home because the strain on his wife would be too great. The trial judge, in assessing general damages, did so under three heads:

- (a) Loss of future earnings - £32,000 (these were actuarially computed).
- (b) Additional expenses, including fees of a mental home - £14,000.
- (c) Pain, suffering and loss of amenities - £10,000.

Special damages of £10,447 were awarded. Accordingly, the trial judge awarded in the aggregate £66,447.

The defendants appealed on the ground that, as a result of adding together separate items instead of giving a single sum, the amount of damages awarded to the plaintiff was excessive. It was held by the Court of Appeal, Salmon, L.J., dissenting, that the damages should be assessed so as to give the plaintiff an amount which was fair compensation in all the circumstances, but it was wrong to attempt to give perfect compensation, as there were personal injuries for which no amount of money would fully compensate. The award was therefore erroneous and should be reduced to £51,447.

Lord Denning, M.R., said, "The items are not separate ... there is a considerable risk of overlapping in just adding them up", and Diplock, L.J., observed, "If one assesses the victim's deprivations under the separate head of loss of the amenities of life, one must

bear in mind that what those amenities would have cost must be deducted in converting into money the loss sustained under that head". Fletcher v. Autocar & Transporters, Ltd. (1968) 1 All E.R. 726.

#### New Lamps for Old

The thorny problem of measuring indemnity arose in the case of Hollebone and Others v. Midhurst and Fernhurst Builders, Ltd., and Eastman & White of Midhurst, Ltd. The plaintiffs' house, which featured a number of exposed oak beams in some of the rooms and was situated in a much sought-after area, was damaged by fire due to the admitted negligence of the second defendants' workmen. The value of the house before the fire was £28,000 and the value after the fire was £13,150. The defendants contended that they were only liable for the difference in value, namely, £14,850, and that in any case an allowance should be made for "betterment" on the basis of new material for old. The plaintiffs claimed the sum of £18,991 which was the actual cost of the repairs.

It was held (1) that on the facts of the case, the plaintiffs' house was unique and the plaintiffs acted reasonably in having the damage made good; (2) that the measure of damages was the cost of repair; (3) that this was not a case where it would be fair to the plaintiffs to make a deduction in respect of betterment. In other words, the authorities which were relied on for the statement that the measure of damages was not the cost of reinstatement could be distinguished on their facts from, or conflicted with, other authorities stating that the cost of repair or replacement was to be the proper measure of damages (dicta of Viscount Dunedin in The Susquehanna (1926) A.C.655, and Lord Sumner in The Chekiang (1926) A.C.637 applied). (1968) 1 Lloyd's Rep.38, Official Referee)

#### Insurance of Manuscripts

Under a Lloyd's "all risks" policy the plaintiff was insured against all and every risk of loss or damage "up to £1,000 in the event of the destruction or loss of any manuscripts or documents, resulting in the necessity for the assured to rewrite, including all costs of research, preparation and the like". The manuscripts of two books were lost, but were not rewritten. The plaintiff claimed £860 against the underwriters, the parties having agreed that the original cost of writing each book was £430 and that the cost of rewriting would be a similar sum. The plaintiff contended that the assurance was against loss of manuscripts, whereas the defendant denied liability on the grounds that it was the actual cost of rewriting which was insured and that no sum was payable unless and until that cost was incurred. Judgment was given for the plaintiff with costs, as the court held that the event insured against was "the destruction or loss of any manuscripts or documents, resulting in the necessity for the assured to rewrite", and that this event had occurred. The cost of rewriting merely quantified that loss. Frewin v. Poland (1968) 1 Lloyd's Rep.100.