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1964
June 12, 15.

Lord Denning M.R., Danckwerts and Diplock L.JJ.

LETANG *v.* COOPER.

[1961 L. No. 296]

Limitation of Action—Trespass to the person—Personal injuries—Facts also giving rise to cause of action in negligence—Action in negligence statute-barred—Whether trespass to the person "breach of duty" —Whether period of limitation six years or three—Limitation Act, 1939 (2 *&* 3 *Geo.* 6, *c.* 21), *s.* 2 (1)—*Law Reform (Limitation of Actions, etc.) Act,* 1954 (2 *&* 3 *Eliz.* 2, *c.* 36), *s.* 2 (1).

Trespass—Involuntary—Unintentional act—Trespass to the person—Sunbather run over by motor car—Whether cause of action in trespass or negligence—Whether actual damage necessary ingredient —Whether "breach of duty" on part of driver—Limitation of action.

Statute—Construction—Mischief aimed at—Whether legitimate to look at report of committee preceding legislation (post, p. 240E).

On July 10, 1957, the plaintiff, whilst sunbathing on a piece of grass which was used as a car park, was injured when the defendant drove his car over her legs. On February 2, 1961, she issued a writ claiming damages for loss and injury caused to her by the defendant's negligence in driving his car and/or the commission by him of a trespass to the person of the plaintiff. In her statement of claim she relied on the pleaded negligence and the particulars thereof as founding her claim in trespass. Elwes J. held that the plaintiff's action in trespass was not an action for damages for "breach of duty" subject to a limitation period of three years under section 2 of the Limitation Act, 1939, as amended by section 2 (1) of the Law Reform (Limitation of Actions, etc.) Act, 1954,[1] and he awarded the plaintiff damages for the defendant's trespass. The defendant appealed:—

Held, (1) allowing the appeal, that the plaintiff's cause of action was an action for negligence and as such was statute-barred under

[Reported by HILARY JELLIE, Barrister-at-Law.]

[1] Law Reform (Limitation of Actions, etc.) Act, 1954, s. 2: "(1) "At the end of section 2 (1) of the "Limitation Act, 1939 (which sub- "section provides, amongst other "things, that there shall be a limita- "tion period of six years for actions "founded on simple contract or on "tort) the following proviso shall be "inserted—'Provided that, in the "'case of actions for damages for "'negligence, nuisance or breach of "'duty (whether the duty exists by "'virtue of a contract or of provision "'made by or under a statute or "'independently of any contract or "'any such provision) where the "'damages claimed by the plaintiff "'for the negligence, nuisance or "'breach of duty consist of or include "'damages in respect of personal "'injuries to any person, this sub- "'section shall have effect as if for "'the reference to six years there "'were substituted a reference to "'three years.'"

section 2 (1) of the Law Reform (Limitation of Actions, etc.) Act, 1954.

Per Lord Denning M.R. and Danckwerts L.J. When the injury to a plaintiff is caused by the defendant's intended act, the cause of action is trespass to the person; when the act is not intended, a plaintiff's only cause of action is negligence (post, p. 239E).

Per Diplock L.J. A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. If A., by failing to exercise reasonable care, inflicts direct personal injuries upon B., it is permissible today to describe this factual situation indifferently, either as a cause of action for negligence or an action for trespass to the person, though "negligence" is the expression to be preferred (post, pp. 242–243). As the plaintiff's factual situation could be described as an action for negligence, her action was statute-barred under section 2 (1) of the Law Reform (Limitation of Actions, etc.) Act, 1954.

Quaere whether actual damage is a necessary ingredient in unintentional trespass to the person (post, pp. 244G–245C).

(2) That the words of section 2 (1) of the Law Reform (Limitation of Actions, etc.) Act, 1954, were plain and wide enough to include all tortious breaches of duty including trespass to the person and, therefore, if the plaintiff had a cause of action in trespass, her action was statute-barred under that section.

Billings v. *Reed* [1945] K.B. 11; 61 T.L.R. 27, C.A. followed.

Kruber v. *Grzesiak* [1963] 2 V.R. 621 applied.

Decision of Elwes J. [1964] 2 Q.B. 53; [1964] 2 W.L.R. 642; [1964] 1 All E.R. 669 reversed.

APPEAL from Elwes J.[2]

On July 10, 1957, the plaintiff, Doreen Ann Letang, was sunbathing on the grass in part of the grounds of the Ponosmere Hotel, Perranporth, Cornwall, used as a car park, when the defendant, Frank Anthony Cooper, drove his Jaguar motor car over both her legs. On February 2, 1961, the plaintiff issued a writ claiming damages "for loss and injury to the plaintiff caused "by (1) the negligence of the defendant in driving a motor car "and/or (2) the commission by the defendant of a trespass to "the person of the plaintiff." Paragraph 1 of her statement of claim alleged that the defendant "negligently and violently "drove a Jaguar motor car . . . against and over the body and "legs of the plaintiff thereby injuring the plaintiff and causing "her loss and damage." The paragraph then set out the particulars of the negligence, injuries and special damage. Paragraph 2 of the statement of claim alleged "Further or in the

[2] [1964] 2 Q.B. 53; [1964] 2 W.L.R. 642; [1964] 1 All E.R. 669.

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" alternative, the plaintiff repeats paragraph 1 hereof and says " that in driving the said motor car against the plaintiff's body " and legs negligently and violently as aforesaid the defendant " committed a trespass to the person of the plaintiff." There followed a statement that the particulars under that paragraph were the same as in paragraph 1.

On February 11, 1964, Elwes J. found negligence against the defendant and assessed her damages at £500 general and £75 special damages. Argument then took place on the question whether the plaintiff's claim was statute-barred by section 2 (1) of the Law Reform (Limitation of Actions, etc.) Act, 1954. In a reserved judgment Elwes J. held that the words " negligence, " nuisance or breach of duty " in section 2 (1) of the Law Reform (Limitation of Actions, etc.) Act, 1954, did not include an action for trespass to the person and that, as the plaintiff's action had been started within six years of the trespass, her action in trespass was not statute-barred under section 2 of the Limitation Act, 1939. He awarded the plaintiff a total of £575 damages.

The defendant appealed.

D. P. Croom-Johnson Q.C. and *Dennis Barker* for the defendant. The plaintiff's action was based on the defendant's negligence; this is shown by the pleadings; the plaintiff accepted that she had that burden of proof and Elwes J. held that she had discharged it and proved negligence. If section 2 (1) of the Law Reform (Limitation of Actions, etc.) Act, 1954, does not include trespass and the plaintiff's action in trespass is not barred after three years, strange anomalies will be imported into English law for, by section 3 of the Act, an attempt was made to provide that the period of limitation would be the same for actions brought under the Fatal Accidents Acts as for personal injury actions. As actions under the Fatal Accidents Acts must include actions for trespass, the result would be that a widow suing in trespass would have three years in which to bring her action, whilst those merely injured by the defendant's default would have six years. The purpose of the Tucker Committee's Report on the Limitation of Actions, Cmd. 7740 (1949), and the Act of 1954, was to shorten the period in which an action for damages for personal injuries could be commenced.

The decision of Diplock J. in *Fowler* v. *Lanning*[3] was relied on by the plaintiff as authority that an action in trespass still

[3] [1959] 1 Q.B. 426; [1959] 2 W.L.R. 241; [1959] 1 All E.R. 290.

A exists, and also by the defendant as authority that if the injury is unintentional the plaintiff has the burden of proving negligence. Adams J. in *Kruber* v. *Grzesiak*,[4] an Australian case in the Supreme Court of Victoria, had to construe section 5 (6) of the Limitation of Actions Act, 1958, where the words are the same as in section 1 (2) of the Law Reform (Limitation of Actions, etc.) B Act, 1954, and he held that the subsection included actions for trespass to the person. The words "negligence, nuisance or "breach of duty" are also to be found in section 3 (1) (*b*) of the Personal Injuries (Emergency Provisions) Act, 1939, and it was held in *Billings* v. *Reed*[5] that those words included trespass. The argument of Mr. Bernard Caulfield in *Pontin* v. C *Wood*,[6] although referred to by Holroyd Pearce L.J.,[7] formed no part of the decision in that case and does not assist the plaintiff here; nor can she obtain assistance from the judgment of Brett J. in *Gibbs* v. *Guild*.[8]

Parliament has modified or varied some of the suggestions of the Tucker Committee and the Act cannot be construed by D reference to the Report (see *Assam Railways and Trading Co. Ltd.* v. *Commissioners of Inland Revenue*),[9] yet authors of the textbooks have referred to the Report as authority for the proposition that the period of limitation in trespass is still six years.

There are two ways of approaching the problem, first, that an action for damages for injury which was not intended is an action E for negligence: *Fowler* v. *Lanning*[10] and *National Coal Board* v. *J. E. Evans & Co. (Cardiff) Ltd. and Maberley Parker Ltd.*,[11] Adams J. in *Kruber* v. *Grzesiak*[12] approached the problem in this way. Secondly, that the words "breach of duty (whether "the duty exists by virtue of a contract or of a provision made "by or under a statute or independently of any contract or any F "such provision)" are very wide indeed and must include the tort of trespass; a person is under a duty not to commit a trespass to the person of his neighbour; see Beven on Negligence, 4th ed. (1928), Vol. 1, p. 8.

Martin Jukes Q.C. and *Stanley Ibbotson* for the plaintiff. There is historically a clear distinction between an action for

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[4] [1963] 2 V.R. 621.
[5] [1945] K.B. 11.
[6] [1962] 1 Q.B. 594, 604; [1962] 2 W.L.R. 258; [1962] 1 All E.R. 294, C.A.
[7] [1962] 1 Q.B. 594, 612.
[8] (1882) 9 Q.B.D. 59, 67.
[9] [1935] A.C. 445; 50 T.L.R. 540, H.L.(E.).
[10] [1959] 1 Q.B. 426.
[11] [1951] 2 K.B. 861; [1951] 2 T.L.R. 415; [1951] 2 All E.R. 310, C.A.
[12] [1963] 2 V.R. 621.

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trespass to the person and an action on the case—which is respectively whether the violence was direct or indirect: *Scott* v. *Shepherd* [13] and *Leame* v. *Bray*.[14] After *Williams* v. *Holland* [15] that distinction was not so important as both direct or indirect violence could form the basis of an action on the case, but it was an additional remedy and did not destroy the right to bring an action in trespass. In 1873 the forms of action were abolished but the causes of action remained unchanged and an action for trespass still exists: *Fowler* v. *Lanning*.[16] In an action for negligence, unlike an action for trespass, damage has to be proved: see *Williams* v. *Milotin*.[17] There is that clear distinction between the two causes of actions and once a plaintiff has elected one of those causes, the period of limitation may well be different.

A statute, such as a Limitation Act, which takes away the rights of a subject must be construed liberally in favour of the citizen. Lord Greene M.R. stated in *Billings* v. *Reed* [18] that the ordinary canons of construction could not be used to construe a war time statute; see also *Roddam* v. *Morley* [19] and *O'Connor* v. *Isaacs*.[20] The statute under construction does not purport to say that all actions for damages for personal injuries must be brought within three years, if that had been intended it could have been stated simply and succinctly. The matter has not been stated simply and, therefore, it must have been intended only to bar certain actions after three years.

"Negligence" and "nuisance" have a specific meaning to a lawyer, but "breach of duty" has no simple definition and is not merely a duty to obey the law, which was the definition of Adams J. in *Kruber* v. *Grzesiak*.[21] If breach of duty includes all torts there would have been no need specifically to refer to the torts of nuisance and negligence in the section. There is no such thing as a duty not to assault or libel a person; the law merely provides the victim with a remedy. Trespass is a tortious remedy and unlike criminal law there are no prohibitions with penalties attached. Torts do not arise from a breach of duty; they arise from the fact that if a person acts wrongly he must pay for that act. The draftsman of the section seemed to have thought that breach of duty should be explained, which

[13] (1773) 2 Wm.Bl. 892.
[14] (1803) 3 East 593.
[15] (1833) 10 Bing. 112.
[16] [1959] 1 Q.B. 426.
[17] (1957) 97 C.L.R. 465.
[18] [1945] K.B. 11, 15.
[19] (1857) 1 De G. & J. 1.
[20] [1956] 2 Q.B. 288; [1956] 3 W.L.R. 172; [1956] 2 All E.R. 417, C.A.
[21] [1963] 2 V.R. 621, 623.

would not have been necessary if breach of duty has such a wide meaning.

Ibbotson following. The Personal Injuries (Emergency Provisions) Act, 1939, was passed in wartime; the normal canons of construction were not, therefore, applied so as to prevent a subject being deprived of his normal rights, *per* Lord Greene M.R. in *Billings* v. *Reed*.[22] In such times the safety of the realm is the supreme law, *per* Lush J. in *Normans* v. *Matthews*.[23]

Croom-Johnson Q.C. replied.

Cur. adv. vult.

June 15. LORD DENNING M.R. read the following judgment: On July 10, 1957, the plaintiff was on holiday in Cornwall. She was staying at a hotel and thought she would sunbathe on a piece of grass where cars were parked. While she was lying there the defendant came into the car park driving his Jaguar motor car. He did not see her. The car went over her legs and she was injured.

On February 2, 1961, more than three years after the accident, the plaintiff brought this action against the defendant for damages for loss and injury caused by (1) the negligence of the defendant in driving a motor car and (2) the commission by the defendant of a trespass to the person.

The sole question is whether the action is statute-barred. The plaintiff admits that the action for negligence is barred after three years, but she claims that the action for trespass to the person is not barred until six years have elapsed. The judge has so held and awarded her £575 damages for trespass to the person.

Under the Limitation Act, 1939, the period of limitation was six years in all actions founded "on tort"; but, in 1954, Parliament reduced it to three years in actions for damages for personal injuries, provided that the actions come within these words of section 2 (1) of the Law Reform (Limitation of Actions, etc.) Act, 1954: "actions for damages for negligence, nuisance or breach "of duty (whether the duty exists by virtue of a contract or of "provision made by or under a statute or independently of any "contract or any such provision) where the damages claimed by "the plaintiff for the negligence, nuisance or breach of duty "consist of or include damages in respect of personal injuries to "any person."

[22] [1945] K.B. 11, 15.

[23] (1916) 32 T.L.R. 303, 304, D.C.

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The plaintiff says that these words do not cover an action for trespass to the person and that therefore the time bar is not the new period of three years, but the old period of six years.

The argument, as it was developed before us, became a direct invitation to this court to go back to the old forms of action and to decide this case by reference to them. The statute bars an action on the case, it is said, after three years, whereas trespass to the person is not barred for six years. The argument was supported by reference to text-writers, such as Salmond on Torts, 13th ed. (1961), p. 790. I must say that if we are, at this distance of time, to revive the distinction between trespass and case, we should get into the most utter confusion. The old common lawyers tied themselves in knots over it, and we should do the same. Let me tell you some of their contortions. Under the old law, whenever one man injured another by the direct and immediate application of force, the plaintiff could sue the defendant in trespass to the person, without alleging negligence (see *Leame* v. *Bray* [1]), whereas if the injury was only consequential, he had to sue in case. You will remember the illustration given by Fortescue J. in *Reynolds* v. *Clarke* [2]: "If a man throws a "log into the highway, and in that act it hits me, I may main- "tain trespass because it is an immediate wrong; but if as it lies "there I tumble over it, and receive an injury, I must bring an "action upon the case; because it is only prejudicial in conse- "quence." Nowadays, if a man carelessly throws a piece of wood from a house into a roadway, then whether it hits the plaintiff or he tumbles over it the next moment, the action would not be trespass or case, but simply negligence. Another distinction the old lawyers drew was this: if the driver of a horse and gig negligently ran down a passer-by, the plaintiff could sue the driver either in trespass or in case (see *Williams* v. *Holland* [3]), but if the driver was a servant, the plaintiff could not sue the master in trespass, but only in case: see *Sharrod* v. *London and North Western Railway Co.* [4] In either case today the action would not be trespass or case, but only negligence.

If we were to bring back these subtleties into the law of limitation, we should produce the most absurd anomalies; and all the more so when you bear in mind that under the Fatal Accidents Act the period of limitation is three years from the death. The decision of Elwes J. if correct would produce these

[1] (1803) 3 East 593.
[2] (1795) 1 Str. 634, 635.
[3] (1833) 10 Bing. 112.
[4] (1849) 4 Exch. 580.

results: it would mean that if a motorist ran down two people, killing one and injuring another, the widow would have to bring her action within three years, but the injured person would have six years. It would mean also that if a lorry driver was in collision at a cross-roads with an owner-driver, an injured passenger would have to bring his action against the employer of the lorry driver within three years, but he would have six years in which to sue the owner-driver. Not least of all the absurdities is a case like the present. It would mean that the plaintiff could get out of the three-year limitation by suing in trespass instead of in negligence.

I must decline, therefore, to go back to the old forms of action in order to construe this statute. I know that in the last century Maitland said "the forms of action we have buried, but they "still rule us from their graves" (see Maitland, Forms of Action (1909), p. 296), but we have in this century shaken off their trammels. These forms of action have served their day. They did at one time form a guide to substantive rights; but they do so no longer. Lord Atkin, in *United Australia Ltd.* v. *Barclays Bank Ltd.*,[5] told us what to do about them: "When these "ghosts of the past stand in the path of justice clanking their "mediaeval chains the proper course for the judge is to pass "through them undeterred."

The truth is that the distinction between trespass and case is obsolete. We have a different sub-division altogether. Instead of dividing actions for personal injuries into trespass (direct damage) or case (consequential damage), we divide the causes of action now according as the defendant did the injury intentionally or unintentionally. If one man intentionally applies force directly to another, the plaintiff has a cause of action in assault and battery, or, if you so please to describe it, in trespass to the person. "The least touching of another in anger is a battery," *per* Holt C.J. in *Cole* v. *Turner*.[6] If he does not inflict injury intentionally, but only unintentionally, the plaintiff has no cause of action today in trespass. His only cause of action is in negligence, and then only on proof of want of reasonable care. If the plaintiff cannot prove want of reasonable care, he may have no cause of action at all. Thus, it is not enough nowadays for the plaintiff to plead that "the defendant shot the plaintiff." He must also allege that he did it intentionally or negligently. If

[5] [1941] A.C. 1, 29; 57 T.L.R. 13; [1940] 4 All E.R. 20, H.L.(E.).

[6] (1704) 6 Mod. 149.

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intentional, it is the tort of assault and battery. If negligent and causing damage, it is the tort of negligence.

The modern law on this subject was well expounded by Diplock J. in *Fowler* v. *Lanning*,[7] with which I fully agree. But I would go this one step further: when the injury is not inflicted intentionally, but negligently, I would say that the only cause of action is negligence and not trespass. If it were trespass, it would be actionable without proof of damage; and that is not the law today.

In my judgment, therefore, the only cause of action in the present case, where the injury was unintentional, is negligence and is barred by reason of the express provision of the statute.

In case I am wrong about this and the plaintiff has a cause of action for trespass to the person, I must deal with a further argument which was based on the opinion of text-writers, who in turn based themselves on the Tucker Committee's report on the limitation of actions which preceded the legislation. This was a committee over which Lord Tucker presided. They reported in 1949. They recommended that, in actions for damages for personal injuries, the period of limitation should be reduced to two years; but they said: "We wish, however, to make it clear that we do "not include in that category actions for trespass to the person, "false imprisonment, malicious prosecution or defamation of "character, but we do include such actions as claims for negli- "gence against doctors." I think the text-writers have been in error in being influenced by the recommendations of the committee. It is legitimate to look at the report of such a committee, so as to see what was the mischief at which the Act was directed. You can get the facts and surrounding circumstances from the report so as to see the background against which the legislation was enacted. This is always a great help in interpreting it. But you cannot look at what the committee recommended, or at least, if you do look at it, you should not be unduly influenced by it. It does not help you much, for the simple reason that Parliament may, and often does, decide to do something different to cure the mischief. You must interpret the words of Parliament as they stand, without too much regard to the recommendations of the committee: see *Assam Railways and Trading Co. Ltd.* v. *Commissioners of Inland Revenue*.[8] In this very case, Parliament did not reduce the period to two years. It made it three years.

[7] [1959] 1 Q.B. 426; [1959] 2 W.L.R. 241; [1959] 1 All E.R. 290.

[8] [1935] A.C. 445; 50 T.L.R. 540, H.L.(E.).

A It did not make any exception of " trespass to the person " or the rest. It used words of general import; and it is those words which we have to construe, without reference to the recommendations of the Committee.

So we come back to construe the words of the statute with reference to the law of this century and not of past centuries. So B construed, they are perfectly intelligible. The tort of negligence is firmly established. So is the tort of nuisance. These are given by the legislature as sign-posts. Then these are followed by words of the most comprehensive description: " Actions for . . . breach " of duty (whether the duty exists by virtue of a contract or of a " provision made by or under a statute or independently of any C " contract or any such provision)." Those words seem to me to cover not only a breach of a contractual duty, or a statutory duty, but also a breach of any duty under the law of tort. Our whole law of tort today proceeds on the footing that there is a duty owed by every man not to injure his neighbour in a way forbidden by law. Negligence is a breach of such a duty. So is nuisance. D So is trespass to the person. So is false imprisonment, malicious prosecution or defamation of character. Professor Winfield indeed defined " tortious liability " by saying that it " arises from the " breach of a duty primarily fixed by the law: this duty is " towards persons generally and its breach is redressible by an " action for unliquidated damages ": See Winfield on Tort, 7th E ed. (1963), p. 5.

In my judgment, therefore, the words " breach of duty " are wide enough to comprehend the cause of action for trespass to the person as well as negligence. In support of this view, I would refer to the decision of this court in *Billings* v. *Reed*,[9] where Lord Greene M.R.[10] gave the phrase " breach of duty " a similar wide F construction. I would also refer to the valuable judgment in Australia of Adam J. in *Kruber* v. *Grzesiak*.[11] The Victorian Act is in the self-same words as ours; and I would, with gratitude, adopt his interpretation of it.

I come, therefore, to the clear conclusion that the plaintiff's cause of action here is barred by the Statute of Limitations. Her G only cause of action here, in my judgment, where the damage was unintentional, was negligence and not trespass to the person. It is therefore barred by the word " negligence " in the statute. But even if it was trespass to the person, it was an action for

[9] [1945] K.B. 11; 61 T.L.R. 27, C.A.
[10] [1945] K.B. 11, 19.
[11] [1963] 2 V.R. 621.

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" breach of duty " and is barred on that ground also. Accordingly, I would allow the appeal.

DANCKWERTS L.J. read the following judgment: I agree, and I need only add a few words. The question seems to me to be completely covered by the provisions of the Act of 1954, which add a proviso to section 2 (1) of the Limitation Act, 1939. I must read the words of the statute again: " Provided that, in the case " of actions for damages for negligence, nuisance or breach of " duty (whether the duty exists by virtue of a contract or of " provision made by or under a statute or independently of any " contract or any such provision) where the damages claimed by " the plaintiff for the negligence, nuisance or breach of duty " consist of or include damages in respect of personal injuries to " any person, this subsection shall have effect as if for the refer- " ence to six years there were substituted a reference to three " years."

The terms of this provision are very wide, and, in my opinion, cover the case of a claim for damages for trespass to the person of the plaintiff. It may be true that the statute is limiting rights which a person might possess at common law, but this argument cannot prevail if the meaning of the words of the statute is plain; and, in my view, the words of the statute are plain in their meaning.

I find support for this conclusion in the statement of Lord Greene M.R. in *Billings* v. *Reed*,[12] notwithstanding that the similar words there under consideration were in a wartime statute, and no very effective contention seems to have been put forward for a different construction.

In my view, trespass to the person involves a breach of duty, as in the case of any other tort, as Mr. Beven said many years ago in his book on negligence, Negligence in Law, 4th ed. (1928), Vol. 1, p. 8. It would be monstrous if the ghosts of the forms of action, abolished over 90 years ago, compelled us to come to a different conclusion.

I agree also with the other grounds for allowing the appeal discussed by Lord Denning M.R. in the earlier part of his judgment. I, therefore, also would allow the appeal.

DIPLOCK L.J. read the following judgment: A cause of action is simply a factual situation the existence of which entitles one

[12] [1945] K.B. 11, 19.

person to obtain from the court a remedy against another person. Historically, the means by which the remedy was obtained varied with the nature of the factual situation and causes of action were divided into categories according to the "form of action" by which the remedy was obtained in the particular kind of factual situation which constituted the cause of action. But that is legal history, not current law. If A., by failing to exercise reasonable care, inflicts direct personal injury upon B., those facts constitute a cause of action on the part of B. against A. for damages in respect of such personal injuries. The remedy for this cause of action could, before 1873, have been obtained by alternative forms of action, namely, originally either trespass vi et armis or trespass on the case, later either trespass to the person or negligence: (see Bullen & Leake, Precedents of Pleading, 3rd ed. (1868)). Certain procedural consequences, the importance of which diminished considerably after the Common Law Procedure Act, 1852, flowed from the plaintiff's pleader's choice of the form of action used. The Judicature Act, 1873, abolished forms of action. It did not affect causes of action; so it was convenient for lawyers and legislators to continue to use, to describe the various categories of factual situations which entitled one person to obtain from the court a remedy against another, the names of the various "forms "of action" by which formerly the remedy appropriate to the particular category of factual situation was obtained. But it is essential to realise that when, since 1873, the name of a form of action is used to identify a cause of action, it is used as a convenient and succinct description of a particular category of factual situation which entitles one person to obtain from the court a remedy against another person. To forget this will indeed encourage the old forms of action to rule us from their graves.

If A., by failing to exercise reasonable care, inflicts direct personal injuries upon B., it is permissible today to describe this factual situation indifferently, either as a cause of action in negligence or as a cause of action in trespass, and the action brought to obtain a remedy for this factual situation as an action for negligence or an action for trespass to the person—though I agree with Lord Denning M.R. that today "negligence" is the expression to be preferred. But no procedural consequences flow from the choice of description by the pleader: see *Fowler* v. *Lanning*.[13] They are simply alternative ways of describing the same factual situation.

[13] [1959] 1 Q.B. 426.

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In the judgment under appeal, Elwes J. has held that the Law Reform (Limitation of Actions, etc.) Act, 1954, has by section 2 (1) created an important difference in the remedy to which B. is entitled in the factual situation postulated according to whether he chooses to describe it as negligence or as trespass to the person. If he selects the former description, the limitation period is three years; if he selects the latter, the limitation period is six years. The terms of the subsection have already been cited, and I need not repeat them.

The factual situation upon which the plaintiff's action was founded is set out in the statement of claim. It was that the defendant, by failing to exercise reasonable care, of which failure particulars were given, drove his motor car over the plaintiff's legs and so inflicted upon her direct personal injuries in respect of which the plaintiff claimed damages. That factual situation was the plaintiff's cause of action. It was the cause of action for which the plaintiff claimed damages in respect of the personal injuries which she sustained. That cause of action or factual situation falls within the description of the tort of negligence and an action founded on it, that is, brought to obtain the remedy to which the existence of that factual situation entitles the plaintiff, falls within the description of an action for negligence. The description "negligence" was in fact used by the plaintiff's pleader; but this cannot be decisive for we are concerned not with the description applied by the pleader to the factual situation and the action founded on it, but with the description applied to it by Parliament in the enactment to be construed. It is true that that factual situation also falls within the description of the tort of trespass to the person. But that, as I have endeavoured to show, does not mean that there are two causes of action. It merely means that there are two apt descriptions of the same cause of action. It does not cease to be the tort of negligence because it can also be called by another name. An action founded upon it is nonetheless an action for negligence because it can also be called an action for trespass to the person.

It is not, I think, necessary to consider whether there is today any respect in which a cause of action for unintentional as distinct from intentional trespass to the person is not equally aptly described as a cause of action for negligence. The difference stressed by Elwes J. that actual damage caused by failure to exercise reasonable care forms an essential element in the cause of action for negligence, but does not in the cause of action in trespass to the person, is, I think, more apparent than real when

A the trespass is unintentional; for, since the duty of care, whether in negligence or in unintentional trespass to the person, is to take reasonable care to avoid causing actual damage to one's neighbour, there is no breach of the duty unless actual damage is caused. Actual damage is thus a necessary ingredient in unintentional as distinct from intentional trespass to the person. But whether this B be so or not, the subsection which falls to be construed is concerned only with actions in which actual damage in the form of personal injuries has in fact been sustained by the plaintiff. Where this factor is present, every factual situation which falls within the description " trespass to the person " is, where the trespass is unintentional, equally aptly described as negligence.

C I am therefore of opinion that the facts pleaded in the present action make it an action " for negligence . . . where the damages " claimed by the plaintiff for the negligence . . . consist of or " include damages in respect of personal injuries to " the plaintiff, within the meaning of the subsection, and that the limitation period was three years.

D In this respect I agree with the judgment of Adam J., the only direct authority on this point, in the Victorian case of *Kruber* v. *Grzesiak*.[14] To his lucid reasoning I am much indebted. This is yet another illustration of the assistance to be obtained from the citation of relevant decisions of courts in other parts of the Commonwealth, and I am particularly grateful to counsel for E the defendant and those instructing him for drawing our attention to this case. But I agree with my brethren and with Adam J. that this action also falls within the words " actions for . . . breach of " duty (whether the duty exists by virtue of a contract or of a " provision made by or under a statute or independently of any " contract or any such provision)." I say " also falls," for in F the absence of the word " other " before " breach of duty " that expression as explained by the words in parenthesis is itself wide enough to include " negligence " and " nuisance."

In their ordinary meaning, the words " breach of duty " as so explained are wide enough to cover any cause of action which gives rise to a claim for damages for personal injuries, as Lord G Greene M.R. in *Billings* v. *Reed*[15] said of very similar words in the Personal Injury (Emergency Provisions) Act, 1939. Why should one give them a narrower and strained construction? The Act is a limitation Act; it relates only to procedure. It does not divest any person of rights recognised by law; it limits the period within

[14] [1963] 2 V.R. 621.

[15] [1945] K.B. 11.

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which a person can obtain a remedy from the courts for infringement of them. The mischief against which all limitation Acts are directed is delay in commencing legal proceedings; for delay may lead to injustice, particularly where the ascertainment of the relevant facts depends upon oral testimony. This mischief, the only mischief against which the section is directed, is the same in all actions in which damages are claimed in respect of personal injuries. It is independent of any category into which the cause of action which gives rise to such a claim falls. I see no reason for approaching the construction of an enactment of this character with any other presumption than that Parliament used the words it selected in their ordinary meaning and meant what it chose to say.

Counsel for the plaintiff has, however, submitted that an action for trespass to the person is not an action for "breach of "duty" at all. It is, he contends, an action for the infringement by the defendant of a general right of the plaintiff; there is no concomitant duty upon the defendant to avoid infringing the plaintiff's general right. This argument or something like it, for I do not find it easy to formulate, found favour with Elwes J. He drew a distinction between what he described as a "particular "duty" owed by a particular defendant to a particular plaintiff which he said, no doubt with *Hay or Bourhill* v. *Young* [16] in mind, was an essential element in the cause of action in negligence, and a "general duty" not to inflict injury on anyone; but to describe the latter, which is merely the obverse of the plaintiff's cause of action in trespass to the person, as a "duty" was, he thought, not to use the language of precision as known to the law.

I would observe in passing that a duty not to inflict direct injury to the person of anyone is by its very nature owed only to those who are within range—a narrower circle of Atkinsonian neighbours than in the tort of negligence. But in any event this distinction between a duty which is "particular" because it is owed to a particular plaintiff and a duty which is "general" because the duty owed to the plaintiff is similar to that owed to everyone else is fallacious in relation to civil actions. A. has a cause of action against B. for any infringement by B. of a right of A. which is recognised by law. Ubi jus, ibi remedium. B. has a corresponding duty owed to A. not to infringe any right of A. which is recognised by law. A. has no cause of action against B. for an

[16] [1943] A.C. 92; [1942] 2 All E.R. 396, H.L.(Sc.).

A infringement by B. of a right of C. which is recognised by law. B. has no duty owed to A. not to infringe a right of C., although he has a duty owed to C. not to do so. The number of other people to whom B. owes a similar duty cannot affect the nature of the duty which he owes to A. which is simply a duty not to infringe any of A.'s rights. In the context of civil actions a duty B is merely the obverse of a right recognised by law. The fact that in the earlier cases the emphasis tended to be upon the right and in more modern cases the emphasis tends to be upon the duty merely reflects changing fashions in approach to juristic as to other social problems, and must not be allowed to disguise the fact that right and duty are but two sides of a single C medal.

An alternative way of narrowing the construction of these wide general words which I think was also present to the mind of the judge was to apply the principle of noscitur a sociis and, because the cause of action in both negligence and nuisance involves the infliction of actual damage as an essential element, D to construe "breach of duty" as limited to breaches of duty giving rise to causes of action in which the infliction of actual damage is an essential element. The maxim noscitur a sociis is always a treacherous one unless you know the societas to which the socii belong. But it is clear that breach of duty cannot be restricted to those giving rise to causes of action in which the E infliction of actual damage is an essential element, for the words in parenthesis expressly extend to a duty which exists by virtue of any contract and the infliction of actual damage is not an essential element in an action for breach of contractual duty.

Really, the only argument for cutting down the plain and wide F meaning of the words breach of duty is that to do so renders the inclusion of the specific torts of negligence and nuisance unnecessary. But economy of language is not invariably the badge of parliamentary draftsmanship. Negligence and nuisance are the commonest causes of action which give rise to claims for damages in respect of personal injuries. To mention them specifically G without adding the word "other" before "breach of duty" is not in itself sufficient to give rise to any inference that the wide general words were not intended to cover all causes of action which give rise to claims for damages in respect of personal injuries; particularly when the same combination of expressions in a similar context had already been given a very wide interpretation by the Court of Appeal. On these grounds I would

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hold that the limitation period for this action was three years and would allow the appeal.

Appeal allowed with costs.
Leave to appeal to the House of Lords refused.

Solicitors: *Barlow, Lyde & Gilbert; Brown, Turner, Compton Carr & Co. for R. Lucas & Sons, Harrow.*

C. A. 1964 *June* 29, 30; *July* 22.

Lord Denning M.R., Harman and Davies L.JJ.

EGGER *v.* VISCOUNT CHELMSFORD AND OTHERS.

[1960 E. No. 1537.]

Libel and Slander—Privilege—Qualified—Joint publication—Defamatory letter published by secretary of unincorporated club on instructions of sub-committee members—Occasion privileged on ground of common interest—Finding by jury of express malice in five committee members but no malice in secretary and three committee members—Judgment entered and order for costs of two trials made against all defendants—Whether defence of qualified privilege attaching to individual defendant or to publication—Whether innocent publisher of joint libel on privileged occasion affected by malice of joint publisher.

The plaintiff brought an action claiming damages against the assistant secretary and 10 members of a sub-committee of a club which was an unincorporated body, for libel contained in a letter written by the secretary on the instructions of the sub-committee to a person with an interest to receive the letter. The defendants pleaded, inter alia, that the letter was written on an occasion of qualified privilege. The plaintiff by her reply alleged express malice on the part of the defendants as ousting the privilege. After a long trial the jury disagreed; on a retrial, the jury returned a verdict for the plaintiff, but found that the secretary and three of the eight surviving committee members were not actuated by malice in publishing the letter. At each trial the judge ruled that the occasion was one of qualified privilege; but at the conclusion of the retrial, the trial judge, holding that the situation was analogous to that in *Smith* v. *Streatfeild* [1913] 3 K.B. 764; 29 T.L.R. 707, entered judgment against all the defendants and ordered that they should pay the costs of both jury trials, which had been long and expensive. On appeal by the secretary and the three committee members found innocent of malice:—

Held, allowing the appeal, (1) that the non-malicious committee members were not liable to the plaintiff, for each had in relation to the joint publication an independent and individual privilege which could not be defeated by the malice of others taking part in