OCCUPIERS' LIABILITY

Where interest in occupiers' liability has not been blunted by local legislation, the Privy Council decision in *Perkowski* v. *Wellington Corporation* [1959] A.C. 53, [1958] 3 W.L.R. 564, [1958] 3 All E.R. 368, can only be received with disappointment; the distinction between the liability of an invitor and that of a licensor was accepted by their Lordships without comment and the position of one who visits premises held open by local authorities was generally avoided.

The defendants, a local corporation, had erected on premises of which they were the occupiers, a spring- or diving board. The board stood about six feet above the water at high tide and about two feet at low tide. The defendants had put up no warning sign or tide gauge, a neglect which the jury found to create an obvious danger. The plaintiff's husband died of injuries received as a result of diving from the board at low tide. At the trial, the plaintiff sought damages under a local compensation act on the basis that the deceased was a licensee of the defendants; the learned trial judge accordingly found for the defendants, who were not liable for damages arising from obvious dangers.

The second of the three grounds of appeal is of no interest. The third sought to place the deceased in a category higher than that of licensee and might have been of more interest. Unfortunately, it was dismissed without serious discussion, their Lordships holding that points of law not pleaded at the trial cannot be taken on appeal. The law regarding the status of persons entering premises maintained by local authorities and open to the public is thus not brought further than *Purkis* v. *Walthamstow Borough Council* (1934) 151 L.T. 30, 98 J.P. 244, 78 Sol. Jo. 207, [1934] All E.R. Rep. 64, *Plank* v. *Stirling Magistrates* 1956 S.C. 92 and the *American Restatement of the Law of Torts,* vol. II, para. 347. In limiting the liability of the defendants, as licensors, to the jury's finding that the danger was not a concealed danger, however, their Lordships did implicitly accept the distinction between concealed and unusual dangers.

In stating his first ground, counsel for the plaintiff did try to get beyond occupiers' liability by seeking, not uningeniously, to impose a general duty upon the corporation as *erectors of* the board, but their Lordships brought the duty to an issue between licensee and licensor, to wit, to the question whether the licensee, in this case, must take the land as he finds it. Counsel had argued that the occupier is liable on the ordinary principle of negligence in respect of any dangers which are the result of his own negligent operations, and that this is still so where the operations have ceased before the licensee enters but leave in existence a continuing state of danger. Their Lordships, however, held to the cardinal principle that a licensee must take the land as he finds it. Counsel's submission amounted to denying this; it implied that the licensee must take the land not as he finds it, but as he would have found it when the occupier went into occupation. In rejecting the application of cases on current operations on land cited by counsel their Lordships distinguished between activities on land and changes in the condition of the land; the fact that such changes were created by the occupier was irrelevant.

A. E. S. TAY.[1]

1. Of Lincoln's Inn, Barrister-at-Law; of Singapore, Advocate and Solicitor; Temporary Assistant Lecturer in Law in the University of Malaya in Singapore.