CHARLESWORTH ON NEGLIGENCE, 4th edition by R. A. Percy, M.A. (The Common Law Library No. 6). [London: Sweet & Maxwell Ltd. 1962. lxxxiii (incl. index) 666 pp. 5 gns.]

The term "negligence", like many others such as "judicial", "possession", "common law", has more than one meaning. Dr. Charlesworth was fully aware of this for in the very first paragraph of his book, he stated:

> In current forensic speech negligence has three meanings. They are (1) a state of mind in which it is opposed to intention, (2) careless conduct, and (3) the breach of a duty to take care imposed by common or statute law.

Dr. Charlesworth then indicated that in writing this book on negligence, he is using the term in its third meaning above stated. He said, at page 10 of the present edition, "Negligence, meaning a breach of duty, is a specific tort in itself and not simply ... an element in some more complex relationship or in some specialised breach of duty. It is this specific tort of negligence which is to be dealt with in this book."

In view of this clear statement of the scope of the book, the reader is taken aback to find included in it, chapters on strict liability.[1] That strict liability falls outside the conceptual framework of the tort of negligence seems manifest. Even Dr. Charlesworth appeared to have recognised this for he stated at page 243, para. 507:

> Liability for damage caused by dangerous things is absolute, that is to say, it is not necessary to prove any negligence or lack of care on the part of anyone provided that (1) the dangerous thing escapes from a place in the occupation of the defendant or over which he has control and, possibly, (2) its presence on the land constituted a "non-natural" user of the land.

If Dr. Charlesworth had written a book on the law relating to unintentional harm, the inclusion of strict liability would be proper. Its inclusion in a book professedly devoted to the tort of negligence is an anomaly.

In discussing the rule in *Rylands* v. *Fletcher,* Dr. Charlesworth characterised the thing escaping from the defendant's land and doing damage to the plaintiff's land as

1. See chapters 10 to 16, inclusive.

"dangerous things" and he then equated this class with the class of "dangerous chattels" in the tort of negligence.[2] That this is a mistake has been pointed out by Professor Harry Street,[3] from whom I quote:

> Blackburn J., spoke of "anything likely to do mischief if it escapes." These things must not be summarily described as "dangerous" and then be equated, and, in turn, confused with those things which have been styled "dangerous" in the law of Negligence: it were wise to eschew this word "dangerous" for it means so many different things in different contexts. Thus, water is not "dangerous" *per se,* yet it was the "thing" in *Rylands* v. *Fletcher* itself. As Du Parcq L.J. said in *Read* v. *Lyons,* what matters here is whether the thing is likely to do damage on escaping to other land. Whether or not this involves personal danger is irrelevant. Thus filth and water are things within the rules. Nor is the extra-hazardous quality of the thing (in the sense that it might be likely to harm persons who are on the premises where it is kept) of any moment.'

This confusion has resulted in statements such as the following:

> Secondly, the things indicated above are dangerous in themselves or what may be described as inherently or essentially dangerous. They have been termed actively dangerous. The danger in such things as ... water . . . is derived from the quality of the thing itself and not from external circumstances. [4]

If water has a dangerous quality, one wonders what it is.

This edition, unlike its predecessors, is edited not by its author but by one, Mr. R. A. Percy. Mr. Percy, in his preface to this edition, quoted Dr. W. T. S. Stallybrass as having said that, "The editor of a book by a deceased author of world-wide reputation has to steer between Scylla and Charrybdis." It is to be hoped that in future editions Mr. Percy will think it not improper to steer a less precise course in order to remove what is clearly an anomaly.

The Occupiers' Liability Act, 1957 was passed after the date of publication of the third edition. It has therefore fallen to Mr. Percy to revise Chapter 9, on Dangerous Premises, to accommodate the provisions of that Act. Mr. Percy has not written a new chapter, nor has he totally discarded the old. He has written new sections on the Occupiers' Liability Act, 1957 and retained much of the law prior to the Act for purposes of contrast and explanation. This also means that the lawyer in jurisdictions where the law is the pre-Occupiers' Liability Act law, such as Singapore and the Federation of Malaya, may continue to resort to chapter 9 of Dr. Charlesworth's book.

The Privy Council's decision in the *Wagon Mound* is briefly stated in paragraph 1290. The heading to this paragraph reads "Re Polemis is not good law." Remembering that *Re Polemis* is a decision of the Court of Appeal, and the *Wagon Mound* is a decision of the Privy Council on an appeal from New South Wales, that is a bold

2. See para. 502, para. 782.

3. *The Law of Torts*, 2nd ed. at p. 245.

4. Para. 502 at p. 241.

proposition. What is surprising is that, taking this view, Mr. R. A. Percy should have failed to revise paragraph 1294 at page 610, which states that, "If the damage is neither a direct result of the negligence, as explained above, nor a consequence which ought reasonably to have been foreseen, it is too remote." If this is true, then the corollary that damage is not too remote if it is either a direct result of the negligence or a consequence which ought reasonably to have been foreseen, is also true. This logically implies that the English law has two alternative tests of remoteness; which further implies that *Re Polemis* and the *Wagon Mound* are both good law.

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