treated this as a case where the occupier had not created the nuisance, and therefore considered that the only question was whether he had continued the nuisance when he had knowledge or means of knowledge. The Court of Appeal held, however, that as the occupier had himself created the nuisance, it mattered not whether he knew of it or ought to have known of it.

Hence there seems to be a tendency to apply the laws of nuisance very strictly. (A) If the occupier himself creates a public nuisance he is liable whether he knows or ought to know of it. (B) If *Wringe v. Cohen* is correct the same doctrine applies to private nuisance. (C) If the nuisance is created by a trespasser, the rule in public and private nuisance is the same—reasonably prompt steps must be taken by the occupier as soon as he knows or ought to know of the existence of the nuisance.

—NORVAL R. MORRIS
WILLIAM ROGERS.

LOSS OF EXPECTATION OF LIFE.*

The importance of *Benham v. Gambling*[1] is that the House of Lords has now declared its view on the principles which should dictate the assessment of damages for loss of expectation of life. The practical importance of this head of damages is fairly recent. In *Flint v. Lovell*[2] the doctors were unanimous that the plaintiff would not live more than one year and it was held that the jury were entitled to take into account, in assessing damages, the fact that plaintiff's life had been materially shortened. (Incidentally, the plaintiff was still living three years later). The Law Reform (Miscellaneous Provisions) Act of 1934 intensified the problem, for the rule that actions in tort died with the plaintiff was (subject to some exceptions) abolished. As soon as it was decided that even in cases of almost instantaneous death, the deceased had a cause of action before he died,[3] then the way was open for the personal representative to sue whenever death was caused by negligence.

But on what basis should damages for loss of expectation of life be assessed ? Clearly no sum awarded can be an exact equivalent of the life that has been lost. Should the age, health, temperament and earning power of the deceased be considered as relevant ? In the *Aizkarai Mendi*,[4] the facts were that nine seamen were drowned and the trial judge awarded equal damages to each, although their ages varied from 23 to 44 years. On appeal it was held that the age factor could not be entirely neglected. Damages were finally assessed as follows :—

£400 each for those under 30 years.
£350 ,, ,, ,, ,, 40 ,,
£300 ,, ,, ,, between 41 and 44 years.

The difficulty that is raised by the problem of settling a reasonable amount of damages is shown by the results of the following cases expressed in tabular form.

* The writers acknowledge gratefully the assistance provided in the preparation of this note by the Honour Class in Wrongs.

1. [1941] 1 All E.R. 7.
2. [1935] 1 K.B. 354.
3. *Morgan v. Scoulding*, [1938] 1 K.B. 786.
4. [1938] 1 K.B. 786.

Case.	Age of victim.	Damages awarded.
Rose v. Ford[5]	23	£1,000
Irubyfield v. G.W. Railway[6]	8	£1,500
Morgan v. Scoulding[7]	23	£1,000
Feay v. Barnwell[8]	71	£600
Bailey v. Howard[9]	3	£1,000
Mills v. Stanway Coaches Ltd.[10]	34	£1,000
Shepherd v. Hunter[11]	3	£90[12]

In *Mills v. Stanway Coaches Ltd.*, Slesser L.J. thought that the damages for loss of expectation of life of a healthy woman of 23 should not be above £1,000. There seems to have been a tendency to regard £1,000 as a round figure with which the calculations should commence.

Benham v. Gambling[13] was the first case in which the House of Lords considered the question of the *amount* of damages that should be awarded. The facts were that a child of 2½ died as the result of a motor accident and was awarded £1,200. The House of Lords in considering the case, took into account the dictum of Asquith J. " that human life must be assumed on the whole to be an advantage rather than a disadvantage, and, if the victim has had its life reduced by a longer period, that is a graver disadvantage in respect of which larger damages ought to be awarded than if its life had been reduced by a shorter period."[14]

The abnormally " safe " circumstances of the child's life and the ability of the child to enjoy the years it had lost were also considered. £200 was finally awarded and even this amount, it was decided, would have been " excessive if it were not that the circumstances of the infant were most favourable."

The result of this is that £200 must now be considered the maximum amount for a very young child, while awards for adults must be as moderate as those in *Aizkarai Mendi*, instead of the fairly substantial amounts which *Rose v. Ford* and *Bailey v. Howard* establish.[15] The House of Lords, while agreeing that some account must be paid to the age of the victim, rejected any strict application of an actuarial test based on the expectation of life of a person of that particular age. Age is relevant, but " the thing to be valued . . . is the prospect of a predominantly happy life." Apparently if the character or habits of the individual are calculated to lead to an unhappy or despondent future, the amount awarded should be proportionately smaller. On the other hand, " damages are in respect of loss of life, not of loss of future pecuniary prospects," and the wealth and status of the victim are logically irrelevant.

—J. H. ARUNDELL.
—A. R. WATSON.

5. [1937] A.C. 826.
6. [1937] 4 All E.R. 614.
7. [1938] 1 All E.R. 28.
8. [1938] 1 All E.R. 31.
9. [1938] 4 All E.R. 827.
10. [1940] 2 All E.R. 586.
11. [1938] 2 All E.R. 587.
12. But this case was sent for a new trial by the C.A. on the ground that the damages were grossly inadequate.
13. [1941] 1 All E.R. 7.
14. In the court of first instance.
15. Of course in Victoria, since the English legislation has not been adopted, an action lies for loss of expectation of life only if the plaintiff is living at the time of the action.