TORT — DUTY OF CARE — EVIDENCE — ISSUE ESTOPPEL

In *Edwards v. Joyce*[1] the plaintiff brought an action against the defendants, Joyce and Lee, claiming damages for negligence. She had been injured when a car in which she was a passenger, driven by one Whitehead, had collided with a truck driven by the defendant Joyce, an employee of the defendant Lee. The defendants joined Whitehead as a third party, claiming indemnity or contribution under the Wrongs (Tortfeasors) Act 1949. Another passenger in Whitehead's car, Newell, had previously recovered by action damages from Joyce and Whitehead, and in that action the jury had fixed Whitehead's proportion at one-quarter of the whole. Whitehead now sought to prevent the defendants to the present action from reopening the apportionment of damages. It was held that his plea failed. The two cases arose out of distinct duties owed by Whitehead, and thus there was no basis for raising an issue estoppel.

Sholl J. proceeded to an examination of the authorities, Australian and English, but concluded by basing his decision squarely on the decision of the High Court in *Jackson v. Goldsmith*.[2] "It is determined by that case that a decision in a suit between A and B, arising out of a collision between two vehicles on the road, that A (the driver of one vehicle) did not commit a breach of his duty to take due care for the safety of B (the other driver), does not decide one way or the other, as between A and B, whether A committed a breach of his duty to take care for the safety of C, a passenger in B's car. Apparently that is so, even if there is nothing in the facts to differentiate the position of B and C as regards A and notwithstanding that A's duty towards B and C, the occupants of the one vehicle, is the same in the case of each, viz., to take due care for his safety in the circumstances."[3] Thus it cannot be said that the duty of care owed by vehicle-drivers on the highway is one single duty, owed to all persons who are lawfully on the highway to take due care for the safety of all such persons, but the duty must be expressed as a separate duty owed to each of a number of persons. Each issue must be expressed in relation to a duty owed to a particular person, and not towards a general class of persons.[4] Here therefore the previous decision on the respective responsibilities of Joyce and Whitehead for the damage caused to Newell had no relevance to an action where their respective responsibilities to Edwards were in question: the issue was different and no issue estoppel arose. An additional reason was found to reject the plea against Lee, in that he was not a party to the earlier proceedings, nor was he a privy bound by them.

This is clearly a sound application of the principle laid down in

[1] [1954] V.L.R. 216.
[2] (1950) 81 C.L.R. 446.
[3] [1954] V.L.R. 216, 227.
[4] *Ibid.* 226.

Jackson v. Goldsmith. Yet however sound it may be in theory, the result in practice is unfortunate. That a person should suffer in court for his own stupidities alone in the past presentation of a case is fair enough, but this is secured by the rule that only parties to past actions and their privies can be bound by estoppel. When the facts place a plaintiff in exactly the same position *vis-à-vis* two defendants as a previous plaintiff was placed with regard to them, it would be more convenient and more sensible if the position between the two defendants was bound to be the same in each case. This much at least can be said for a general duty.

B. J. SHAW

CONTRACT – OFFER AND ACCEPTANCE – PROMISE CREATING LEGAL OBLIGATIONS AND MERE STATEMENT – CROWN LIABILITY IN CONTRACT

If the Commonwealth Government promises to pay subsidies to a certain class of manufacturers, can such manufacturers enforce the promise on the ground that the Crown in the right of the Commonwealth has contractually bound itself to pay them?

In *Australian Woollen Mills Pty. Ltd. v. The Commonwealth*[1] the Full High Court, consisting of Dixon C.J., Williams, Webb, Fullagar and Kitto JJ., held in a joint judgment that there was no contractual obligation upon the Crown to pay such subsidies.

The facts of the case are very involved. With the conclusion of the Second World War the Commonwealth Government surrendered its power of compulsory acquisition of wool and allowed the resumption of free auction sales. However it continued the control of prices on cloth imposed during the war. Realizing that the free sale of wool would bring foreign buyers to Australia against whom the local cloth manufacturers would not be able to compete, because of the pegged prices on cloth, the Commonwealth Government informed them by circulars and letters that it would pay subsidies on wool purchased for domestic purposes. To become eligible for payment of subsidies the manufacturers had to submit to governmental control on the amount of wool purchased. This measure was necessary to avoid excessive stock-piling. The Government also declared that it retained the right to review and vary the amount of subsidies. In 1948 the Commonwealth Government decided to end the price control and, therefore, also cease the payment of subsidies. The payments of subsidies on wool purchased before 1949 and still on hand had to be refunded. Subsequently Australian Woollen Mills Pty. Ltd. sued the Commonwealth for payment of money alleged to be due under the above subsidy scheme for wool purchased before

[1] [1954] A.L.R. 453.