
Editorial

Crocodile Tears?

When we hear a judge say that he has come to his decision with “the greatest regret” we tend to give a “Gallic shrug of the shoulders”, to borrow the words of Mr Justice Pain. Individual injustice is the occasional price for certainty in the law, but the price is actually paid by some unfortunate person who deserved better of the world. It is his lawyer who gives the Gallic shrug.

Against the background of current events, a May 23 decision of the Court of Appeal offers a relevant example.¹ A Kent miner was injured (and that was back in 1977) by a fall of rock, and for some reasons not explained in the report, was refused compensation by the National Coal Board. He sued for breach of statutory duty, and has failed because the accident did not happen in his workplace. The gallery in a coal mine would seem to the uninitiated to be a miner’s workplace, but that was not so. The rock fell from the ceiling immediately behind the mechanical cutter, and that was not where the miner was supposed to be working. In fact, “the first thing every underground worker is taught is that one must never go under an unsupported roof” (Mr Justice Veale in *Venn v NCB* [1967] 2 QB 557). The place of the accident could have been the workplace for somebody told to repair the roof, but that

was not the duty of the injured man.

The court reached its conclusion “with considerable regret”. One reason was that English and Scottish courts should follow the same interpretation of an Act that applied to both countries, and that is a powerful argument. The importance of agreement between Scots and English law could not be challenged, especially if we consider what might have happened to the law of negligence if *Donoghue v Stevenson* had not been equally valid in both systems.

Even so, there is a niggling doubt about a strict adherence to the doctrine of precedent. It is true that judges administer the law as it is, and not as they think it ought to be, and the history of strict liability in tort in American law shows what can happen when judges decide cases in the light of what they believe society needs. But it cannot be altogether good to deny justice in one case because of a previous decision in another. The victim of the law in such circumstances may be excused if he were to compare the judge’s protestations of regret with tears falling from the eyes of a crocodile as it welcomes its prey with “gently smiling jaws”.

¹*Hammond v National Coal Board*, The Times, June 8, 1984