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Damages -- Decreased Purchasing Value of the Dollar As Element -- Excessiveness

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this evidence was found sufficient to prove the defendant received the goods. Since proof of the element of receiving has seldom been questioned in this jurisdiction, the court has not had an opportunity to express itself fully upon this subject. However, in view of past decisions, it would seem that at least in the present case, there was sufficient evidence to allow the jury to determine whether the defendant had received the goods.

There was no direct evidence in the case that the defendant received the stolen goods with a felonious intent. This left only the question of whether the circumstances under which the defendant received the goods were such that his felonious intent might be implied. Since the presumption which arises from recent possession had no application, the jury at most was left to conjecture whether the defendant received the stolen goods with a felonious intent, or received them for the purpose of returning the goods to the rightful owner as he had promised to do. Unquestionably these circumstances alone were not sufficient to imply that the defendant received the goods with felonious intent, for our Court has said, "When the act of a person may be attributed to two or more motives, the one criminal and the other not, the humanity of our law will ascertain as to that which is not criminal."\(^45\)

Granting that in the present case there was insufficient evidence of felonious intent, would the Supreme Court have arrived at a different result had the state proved that the defendant had been in possession of the gun for sufficient length of time to have returned it to the owner?

THOMAS A. WADDEN, JR.

**Damages—Decreased Purchasing Value of the Dollar**

**As Element—Excessiveness**

A federal district court recently sustained a jury verdict awarding $160,000 to a four-year-old boy for loss of both arms above the wrist and elbow respectively in a personal injury action.\(^1\) A most interesting aspect of the case is the importance attached to the decreased purchasing value of the dollar by the trial judge in reviewing the award on defendant's motion to set aside as excessive.\(^2\)

Although expressed necessarily in terms of the dollar, the value of an award of damages is not that dollar itself, but the goods and services it will purchase. Thus fluctuations in the purchasing value of the dollar should be a proper consideration in the measurement of monetary com-

\(^{45}\) State v. Massey, 86 N. C. 658 (1882).


\(^2\) Id. at 101 ("In seeking to discover whether or not the jury were actuated by any improper motives in arriving at the amount of the verdict, we should attempt to measure the monetary value of the different elements of damage which were proper for their consideration; bearing in mind the decreased value of the dollar, which has come about very rapidly during the past few years.")
pensation. What weight is to be given this factor is indefinite, most courts merely stating it as one of the numerous factors to be considered. It is, of course, a product of the times, varying in importance with changes in economic conditions, but the long-term downward trend in the purchasing power of the dollar has been evidenced by almost constant reference by many courts over the last thirty years.

The determination of damages in a personal injury action is primarily the province of the jury under proper instructions of the trial court. Most frequently the courts express their reluctance to interfere by saying that to warrant such interference, the verdict must be so excessive as to appear that it was given under the influence of passion or prejudice, or was the result of mistake on the part of the jury. In the principal case the trial judge set out all of the factors which he thought might properly go into the jury's synthesis, including an unusual adjustment for income taxes. After mathematically computing these elements, he concluded that although the verdict was exceptionally large, the jury might properly have reached such a sum. However, it seems that the decreased purchasing value of the dollar, which in effect combined with and inflated each of the other factors, was the prime consideration leading to his justification of the award.

As far back as 1878 a New York appellate court recognized the changing value of the dollar as pertinent to the ascertainment of dam-

Although no mention of the decreased purchasing value of the dollar was found in the North Carolina Reports, this factor undoubtedly has had a degree of influence through the increase in wages which normally follows the increase in cost of living and would thus be reflected in the consideration of lost earning capacity in the measuring of compensation. But cf. Palmer v. Security Trust Co., 242 Mich. 163, 218 N. W. 677 (1928).


A converse application of this principle has been made to decrease the award due to an increase in the purchasing value of the dollar. Johnson v. St. Paul City R. R., 67 Minn. 269, 69 N. W. 900 (1899).

McCORMICK, DAMAGES §§16 (1935); PARMELE, DAMAGE VERDICTS 1 (1927).

McCORMICK, DAMAGES §§18 (1935); PARMELE, DAMAGE VERDICTS 2 (1927).

The following factors were included: pain, suffering, humiliation, permanent disfigurement, inconvenience and personal service and care until the end of maximum expectancy, and loss of earning capacity from the age of 21 until the end of maximum expectancy reduced to present worth. See McCORMICK, DAMAGES §§86, 88, 90 (1935).

Income taxes were computed at the present day rates less 30% anticipated reduction in the near future. Thus taxes payable on estimated potential earnings were deducted yearly and those payable on interest from the principal sum were added. Cf. Galveston, H. & S. A. Ry. v. Dehnisch, ----, Tex. Civ. App. ----, 57 S. W. 64 (1900). Contra: Stokes v. United States, 144 F. 2d 82 (C. C. A. 2d 1944) (too conjectural).
As first applied, it was limited merely to the review of damages by the courts. Since then it has come to be recognized as proper for the jury to consider in reaching the verdict in the first instance. It has been held error to instruct the jury that it must not assess damages according to its present purchasing power of the dollar. Moreover, it has been held proper matter for counsel’s argument to the jury to set forth the increased cost of living.

Probably the most frequently invoked test of the excessiveness or nonexcessiveness of a particular award is its compatibility with previous awards in substantially similar factual situations. The test cannot be applied with mathematical precision because of the many differing factors going into an award but the wide experience reflected in awards given in similar cases is of great value as a guide to what is reasonable compensation in the mind of an average man. Thus a Michigan court stated, “A general review of the cases in which there are facts of a somewhat similar character enables one to determine that the amount of a verdict which does not fall within certain limitations is unjust.”

Gale v. New York C. & H. R. R., 13 Hun 1, 4 (N. Y. 1878) (“But in making comparison of other cases with the present, we notice two things: one is that the relative value of money has diminished in recent times; another is that, generally, in the older parts of the country the relative value of money is less than in the new.”).


Tennessee River Nav. Co. v. Woodward, 18 Ala. App. 34, 88 So. 346 (1920) (charge that jury should not consider change in purchasing value of dollar did not correctly state the law); Hannon v. Delaware, L. & W. R. R., 98 N. J. L. 191, 119 Atl. 86 (1922) (jury authorized to award compensation and in doing so to consider the purchasing power of the standard which was used to express it).


Chesapeake & O. Ry. v. Arrington, 126 Va. 194, 218, 101 S. E. 415, 423 (1919) (“ . . . while each case must be determined by its own facts, it is nevertheless true that the verdicts of other juries, which have been approved by the courts, represent the common or average judgment of mankind as to the proper recovery in such cases.”).

This has been frequently recognized by the courts both in express statements and by constant reference in the opinions to the amounts allowed in cases of a similar nature.20

Other courts go further in expressing this view by stating that when the facts in other cases are similar to the facts in hand, there should be a reasonable uniformity as to the amount of damages.21 The justification for this rule seems to lie in the leveling of any discriminatory tendencies on the part of the jury, in enabling the litigants to ascertain what amount may reasonably be recovered once a cause of action has been established, and in the promoting of more settlements and compromises out of court.

The practice of resorting to previous cases as a guide to securing some uniformity in damages would work an injustice without at the same time considering the decreased value of the dollar.22 Recognizing this, courts use the factor of decreased purchasing value to achieve practical uniformity with other awards which on a strict "dollar and cents" basis are at considerable variance with the particular case at hand. Thus previous decisions considered in conjunction with the shrinking dollar afford a guide by which a fair standard of damages for a particular injury may be estimated.22

A review of past decisions reveals only one judgment in personal injury cases which approaches that of the principal case in size. In 1946 a jury verdict was sustained awarding $165,000 for loss of both legs.23 In 1943 $100,000 was allowed as compensation for loss of both legs,24 and in a similar case in 1944 the same award was sustained.25 Except for these four verdicts in recent years, the average verdict in cases where the injury was the loss of both arms or both legs has been far below $100,000.26 Adjustment of the verdicts in twenty-eight such

20 Parmelee, Damage Verdicts 39 (1927); 15 Am. Jur., Damages §207.
25 Advance v. Thompson, 320 Ill. App. 406, 51 N. E. 2d 334 (1943) (considered depreciation of money in reducing the verdict from $125,000 to $100,000).
cases from 1914 to date to a common base by use of the Department of Labor statistics on the cost of living reveals that the average amount of the verdicts so adjusted is approximately $40,000. Further corrected to the present day cost of living, this average adjusted award would stand at $63,000, an amount some 2 1/2 times smaller than the award sustained. The test of uniformity certainly was not met.

While no statistics are entirely reliable, it would seem that the increased availability and extensiveness of impartial government statistics would afford a better guide for the adjustment of past verdicts to the increased cost of living than would the personal observations of the individual judge. Although the judge in the instant case did refer to these statistics as justifying the award, he failed to utilize them in a comparison with other verdicts. The award here sustained through


27 The cases cited notes 24, 25, and 26 supra were those adjusted. Each verdict was adjusted by dividing the index number of the corresponding year as set out in the Consumers' Price Index into the amount of the award. By this means the verdicts may be compared as of a common base at 1935-1936 = 100. See Monthly Labor Review, United States Department of Labor, Bureau of Labor Statistics, Oct. 1947, p. 510 Table D-1; Handbook of Basic Economic Statistics, 1947 Government Statistics Bureau of Washington, D. C., Consumers' Price Index, pp. 102-103.

28 As of July, 1947.

29 This raises the collateral question of introduction of statistics in the trial court. In Bell v. First National Life Ins. Co., --- La. App. --- 141 So. 484 (1932), the court, in refusing statistics offered by counsel, said, "We are convinced that we should take judicial cognizance of the fact that there has been an advance in the purchasing power of money, but cannot accept the figures which may have been arrived at by writers in trade journals, particularly when the reputation and standing of these writers have not been proven nor the journals offered in evidence."
consideration of the decreased purchasing power of the dollar is thus
greatly larger in proportion to other verdicts in similar cases than the
increased cost of living would seem to justify.\textsuperscript{29}

ROBERT G. STOCKTON.

Domestic Relations—Parent and Child—Support of
Incompetent Adult

Plaintiff, wife of the defendant, brought suit against him to recover
the value of necessaries and necessary services furnished by her to their
adult son. Plaintiff alleged that the defendant husband had separated
himself from his family, that the son continued to live with the plaintiff,
his mother, before reaching majority and thereafter, and that before
and after attaining majority he was insolvent, unmarried, and so men-
tally and physically handicapped as to be incapable of supporting him-
self. On demurrer, \textit{held}: a good cause of action was stated.\textsuperscript{1}

Under the English and earlier American view, the parent's obliga-
tion to support his minor child was a moral one only.\textsuperscript{2} The prevailing
view in this country now, however, is that there is a \textit{legal} as well as
moral duty of support resting on the parent.\textsuperscript{3} While the common law
duty is widely recognized, the basis and reasoning upon which it has
been founded have varied greatly. Some courts have imposed the duty
of support as a reciprocal of the parent's right to the custody, control
and earnings of the minor child;\textsuperscript{4} others have found a basis in the in-

\textsuperscript{29} The fact that on a previous trial of this same case, reversed on appeal, the
jury awarded only $100,000 would also point to the conclusion that an award of
$160,000 was excessive.

\textsuperscript{1} Wells \textit{v. Wells}, 227 N. C. 614, 44 S. E. 2d 31 (1947).

\textsuperscript{2} Mortimer \textit{v. Wright}, 6 M. & W. 481 (Exch. 1841); Shelton \textit{v. Springett}, 11
C. B. 452 (1851); Kelley \textit{v. Davis}, 49 N. H. 187 (1870); Freeman \textit{v. Robinson},

\textsuperscript{3} 1 SCHOUER, \textit{DOMESTIC RELATIONS} §787 (6th ed. 1921); MADDEN, \textit{PERSONS AND
DOMESTIC RELATIONS} §110 (1931).

The North Carolina court early recognized a legal duty on the father to main-
tain his children, even when they had separate estates of their own. Walker \textit{v.}
Crowder, 37 N. C. 478 (1843); Hagler \textit{v. McCombs}, 66 N. C. 345 (1872). The
duty is not an absolute one, however. It is qualified by the parent's ability.

The duty of support is limited to necessaries, what constitutes necessaries
varying with the circumstances of the particular case. The liability is enforced
under several principles: an agency implied in law, an agency implied in fact,
or quasi-contract, the North Carolina court adopting the latter. \textit{See} Howell \textit{v.}
Solomon, 167 N. C. 588, 592, 83 S. E. 619, 621 (1914).

The duty of support is now generally covered by criminal statutes also. \textit{See}
N. C. GEN. STAT. (1943) §§14-324 through 14-325.

\textsuperscript{4} Central Asylum \textit{v. Knighton}, 113 Ky. 156, 67 S. W. 366 (1902); Dedham \textit{v.}
Natick, 16 Mass. 140 (1819); Fulton \textit{v. Fulton}, 52 Ohio St. 229, 39 N. E. 729
(1895); Butler \textit{v. Commonwealth}, 132 Va. 609, 110 S. E. 868 (1922). Right to
custody and earnings does not form a satisfactory basis for the duty, however,
since the duty of support must still remain on the father even though custody of the
child has been awarded the mother or third persons. Alvey \textit{v. Hartwig}, 106 Md.
254, 67 Atl. 132 (1907); \textit{see} Sanders \textit{v. Sanders}, 167 N. C. 319, 83 S. E. 490,
491 (1914).