

COMMENTS

THE MEASURE OF DAMAGES FOR A SHORTENED LIFE

"[T]he crucial controversy in personal injury torts today," a recent commentator has asserted, "is not in the area of liability but of damages."¹ One aspect of the damage problem is the difficulty of proper compensation for the plaintiff whose life expectancy has been shortened by a wrongfully inflicted injury. Although there are no statistics on the frequency with which a curtailment of life expectancy occurs,² certain injuries are known to shorten an individual's life substantially.³ Though it is difficult in the individual case for a doctor to predict with any degree of accuracy how much a life has been shortened, courts have admitted such predictions.⁴ It is thus necessary and possible to compensate plaintiffs whose life expectancies have been curtailed. Yet two major problems may arise which are not satisfactorily answered by our present damage formulas.⁵ The first of these is whether re-

¹ Jaffe, *Damages for Personal Injury: The Impact of Insurance*, 18 *Law & Contemp. Prob.* 219, 221 (1953).

² Accident and health insurance companies are merely concerned with how long they may expect an insured to remain in the "Total and Permanent Disability" category, in order to determine future benefits to be paid. These tabulations will be influenced by economic conditions, level of indemnity payable, strictness of claim adjustment, and so forth, since the company is only concerned with the total economic aspect. Also, these estimates do not segregate accident and sickness claims, nor do they particularize the reason for termination of the disability payments—whether full recovery, partial, or death.

³ E.g., an injury to the spine [*Magee v. City of Troy*, 48 Hun 383, 1 N.Y. Supp. 24 (3d Dep't, 1888)], an injury to the womb [*Houston Electric Co. v. McDade*, 34 Tex. Civ. App. 497, 79 S.W. 100 (1904)], injuries causing a disease of the spinal cord [*Cooper v. St. Paul City Ry. Co.*, 54 Minn. 379, 56 N.W. 42 (1893)], intensification of previous heart trouble and arteriosclerosis [*Choicener v. Walters Amusement Agency, Inc.*, 269 Mass. 341, 168 N.E. 918 (1929)], and permanent coronary thrombosis [*Estabrook v. Butte, A. & P. Ry. Co.*, 163 F. 2d 781 (C.C. 9th, 1947)].

⁴ Cases cited note 3 *supra*. As early as 1870, a court held admissible the prediction of a physician regarding the effect of the plaintiff's injuries: "I think it will result in death before many months; he may live one year." *Toledo, W. & W. Ry. Co. v. Baddeley*, 54 Ill. 19, 23, 5 Am. Rep. 71, 73 (1870).

⁵ Although the introduction of such evidence has been held admissible in the cases noted *supra*, there was no discussion as to the bearing such evidence had on the recovery of damages.

As to admissibility of mortality tables, see *Thordson v. McKeighan*, 235 Iowa 409, 16 N.W. 2d 607 (1944); *Thompson v. City of Seattle*, 35 Wash. 2d 124, 211 P. 2d 500 (1949); *Mitchell v. Arrowhead Freight Lines*, 117 Utah 224, 214 P. 2d 620 (1950); *Wetherbee v. Elgin, J. & E. R. Co.*, 191 F. 2d 302 (C.A. 7th, 1951); *Jones v. Eppler*, —

covery for economic loss is to be computed over the plaintiff's normal life span or over his life span as shortened by the injuries. Neither of these alternatives seems satisfactory. Recovery computed on the basis of the plaintiff's normal life expectancy would be overcompensation, as he would then recover full damages for years he will not live, years in which he will have no living expenses. But to use the plaintiff's abbreviated life expectancy as the measure of damages is likewise unsatisfactory. Though the injured person himself may be adequately compensated, his dependents have been deprived of support for the years now cut off his life span. Moreover, to allow recovery for only the abbreviated life span is in effect to reward the defendant for having injured the plaintiff so severely.⁶

That these competing alternatives may give rise to substantial differences in damages awarded can be seen from the following example: assume a plaintiff with a normal life expectancy of twenty years has been totally and permanently disabled, resulting in lost wages of \$5000 a year and \$6000 total medical expenses. His recovery for the twenty-year period, properly discounted, would be in the neighborhood of \$70,000. If, however, evidence is introduced showing that the plaintiff will live only five more years, the award for those years would be nearer \$30,000. Moreover, the award for pain and suffering might be reduced correspondingly.

The second major problem is whether the curtailment of life expectancy is itself a compensable injury. To allow separate recovery for the loss of years of existence is to introduce a novel and complicating element into the law of damages.

These problems have not received a great deal of attention,⁷ which is not surprising since both plaintiffs and defendants usually have good reasons for not introducing evidence as to shortened life expectancy. The plaintiff fears that the introduction of such evidence may induce the court and jury to award damages on the basis of the abbreviated life expectancy. The defendant is reluctant to emphasize so vividly the extent of the injuries and consequent pain and suffering. And if he argues that damages should be reduced because of the shortening of the plaintiff's life expectancy he would

Okla. —, 266 P. 2d 451 (1954); McCormick, Damages, § 86 (1935); and cases collected in 116 A.L.R. 407 (1938). The defendant may introduce evidence removing plaintiff from the general classification of the mortality tables: *Townsend v. Briggs*, 99 Calif. 481, 34 Pac. 116 (1893); *Murphy v. National Ice Cream Co.*, 114 Calif. App. 482, 300 Pac. 91 (1931); *Louisville & N. R. Co. v. Botts*, 173 F. 2d 164 (C.A. 8th, 1949).

⁶ Which brought forth the following comment from one appellate court: "To admit such an answer is going a step beyond refusing compensation for loss of life. It is permitting a defendant to assert the excessiveness of his own tort to escape paying full compensation for the injury. This should not be permitted." *Olivier v. Houghton County St. Ry. Co.*, 138 Mich. 242, 244, 101 N.W. 530, 531 (1904).

⁷ See *Expectation of Happiness*, 5 Modern L. Rev. 81 (1941); *Damages for Loss of Life Expectancy*, 33 Ill. L. Rev. 967 (1939).

leave himself open to the charge of seeking to profit by his own wrongdoing. Although these problems—calculation damages for loss of wages and compensating for the curtailment of life expectancy—have not arisen frequently in court, their solution is essential to a sound and consistent theory of damages.

English and American courts, in treating these problems, have followed diverse paths. The English courts, in a series of well-known cases over the past twenty years, have chosen to treat the shortening of life expectancy as a separate and distinct item of damages. The first case clearly recognizing this new element involved a seventy-year-old man who had an estimated eight to ten years of life before him when the defendant's motor car reduced this expectancy to one year.⁸ The court decided that this was a compensable injury which could be adequately covered neither by loss of wages—indeed, the plaintiff had none—nor by pain and suffering. Since that which "might have been an eight to ten years pleasant life" had been converted into "a precarious tenure not likely to exceed twelve months,"⁹ a separate recovery was demanded. Roche, L. J., warned, however, that although curtailment of life expectancy was not pain and suffering, there was a danger of duplication of damages since "impending death and the weakness preceding it and the knowledge of these conditions naturally produce or increase the pain and suffering" and "the fact of such a reduction was a very strong piece of evidence upon the seriousness of the injuries."¹⁰ The court awarded recovery for the shortening of the plaintiff's life span, but left unanswered the question of whether damages for *contemplation* of the earlier death were necessarily included.

The answer was provided by the decision in a suit brought by the representatives of a young lady who had lived only four days after her accident.¹¹ Since she had been unaware that her life expectancy had been shortened, the lower court had denied the award, reading the previous decision as requiring a conscious sufferer, one contemplating the fact of early demise.¹² The House of Lords reversed, Lord Roche pointing out, "[T]he subjective ground ought not to be the sole ground upon which this element . . . is to be taken into account. I regard impaired health and vitality not merely as a cause of pain and suffering but as a loss of a good thing in itself."¹³ The court, then, was not measuring a loss in the contemplation of the individual, but rather a "total loss of the good of life over part of the normal period of life. . . ."¹⁴ The lower court's award of £22 was increased by £1000.

The requirement of a conscious sufferer was again rejected in a case where

⁸ Flint v. Lovell, [1935] 1 K.B. 354.

⁹ Ibid., at 359.

¹⁰ Ibid., at 366.

¹¹ Rose v. Ford, [1937] A.C. 826.

¹² Rose v. Ford, [1936] 1 K.B. 90.

¹³ Rose v. Ford, [1937] A.C. 826, 859.

¹⁴ Ibid.

the plaintiff, though living at the time of trial, lacked the mental capacity to appreciate the fact that his life expectancy had been shortened from thirty to sixteen years.¹⁵ The question was simply "whether the length of life which he would have been entitled to anticipate . . . had been diminished."¹⁶ Damages totalling £6542 were awarded: £542 for wages and expenses to date; £4000 for contemplated wages and expenses; and £2000 for "the more uncertain loss arising from the pain and suffering, the shock and the misery, and the loss of the expectation of what has been found by the . . . judge to have been a vigorous, happy and healthy life."¹⁷

There may be found in the opinions, however, some misgivings concerning awards for shortened life expectancy. Such doubts are perhaps manifested by recurring references to the quality of the life lost. In one decision, for example, the loss was described as that of "the prospect of a predominantly happy life."¹⁸ Such references would be unnecessary if the recovery were simply for loss of years from one's normal life span. Doubts are also manifested by recommendations in the later opinions that the amount of recovery should be limited. Thus, in a 1941 decision of the House of Lords, Viscount Simon, L. C., warned that the courts were "attempting to equate incommensurables" by awarding any money at all for the loss and hoped that the case would have the effect of setting "a lower standard of measurement than has hitherto prevailed for what is in fact incapable of being measured in coin of the realm with any approach to real accuracy."¹⁹

In 1950, the value of the shortening of life of a thirty-nine-year-old chief petty officer was assessed at £350 and that of a nineteen-year-old bachelor seaman at £500.²⁰ By 1950 it could be said that "£500 is generally recognized as the maximum sum recoverable . . . , even allowing for the depreciation . . . of the pound sterling."²¹

Loss of life expectancy, in British law, then, has become an item of damages clearly separate from pain and suffering, yet fused with the quality of the particular life lost. It is an item not simply of a loss of time, yet

¹⁵ *Roach v. Yates*, [1938] 1 K.B. 256.

¹⁶ *Ibid.*, at 263.

¹⁷ *Ibid.*, at 268. "[W]hile the doctrine of an award in respect of the shortening of life," said a Scottish court in 1934, "may have originated in the theory of mental disquiet about the prospect of the possibility of death between the date of the accident and the date of death, that doctrine is now a matter *positivi juris* irrespective of the presence or absence of evidence as to the sufferer's state of mind in the particular case." *Reid v. Lanarkshire Traction Co.*, [1934] S.C. 79, 84.

¹⁸ *Benham v. Gambling*, [1941] A.C. 157, 166. Cf. the "vigorous, happy and healthy life" of *Roach v. Yates*.

¹⁹ *Benham v. Gambling*, [1941] A.C. 157, 168.

²⁰ *Bishop v. Cunard White Star, Ltd.*, [1950] 2 All E.R. 22.

²¹ *Assessment of Damages in Fatal Accidents*, 100 L. J. 312 (1950).

nonexistent without a loss of time. The injured party need not, however, be conscious of this loss.

The other major problem resulting from recognition of abbreviation of life expectancy—calculating lost wages—has received scant discussion in the English courts. The few decisions dealing directly with the problem have awarded damages for lost wages on the basis of the plaintiff's life expectancy as shortened by the accident.²² The fact that the plaintiff's dependents have been deprived of support for the period that the life span has been shortened seems to have escaped notice.

The courts in the United States have, by contrast to the English courts, given only negligible treatment to the problem of compensating for curtailment of life expectancy. The few decisions that have noted the possibility of there being a new and distinct item of damages such as that created by the English courts, have flatly rejected it.²³ This comment by the Court of Appeals for the First Circuit is typical:

We are satisfied that if we were to read into the Maine law this novel doctrine [of shortening of life expectancy], our decision would come as a complete surprise to the bench and bar of Maine. . . . We have been referred to no American cases embracing the doctrine of the recent English cases. . . .²⁴

With a minimum of discussion, the American courts have taken a position directly opposed to the English rule for computation of damages for lost wages. The prevailing American rule appears to be that recently stated by the Nebraska Supreme Court:

In an action for damages for personal injuries which are permanent and have impaired the earning capacity, damages for pecuniary loss by reason of decreased earning power are to be based on life expectancy immediately before the injury and for future mental and physical suffering on probable expectancy of life in plaintiff's injured condition.²⁵

²² *Harris v. Bright's Contractors, Ltd.*, [1953] 1 All E.R. 395. Cf. *Roach v. Yates*, [1938] 1 K.B. 256.

²³ *O'Leary v. United States Lines Co.*, 111 F. Supp. 745 (D. Mass., 1953); *Lake Erie & W. R. Co. v. Johnson*, 191 Ind. 479, 133 N.E. 732 (1922); *Ham v. Maine-New Hampshire Interstate Bridge Authority*, 92 N.H. 268, 30 A. 2d 1 (1943); *Krakowski v. Aurora, E. & C. R. Co.*, 167 Ill. App. 469 (1912); *Strain v. Kern*, 2 Dist. & Co. 539 (Pa. County Ct., 1923); *Farrington v. Stoddard*, 115 F. 2d 96 (C.A. 1st, 1940).

²⁴ *Farrington v. Stoddard*, 115 F. 2d 96, 100 (C.A. 1st, 1940).

²⁵ *Borcherding v. Eklund*, 156 Neb. 196, 207, 55 N.W. 2d 643, 650 (1952). Accord: *Crecelius v. Gamble-Skogmo*, 144 Neb. 394, 13 N.W. 2d 627 (1944); *Prairie Creek Coal Mining Co. v. Kittrell*, 106 Ark. 138, 153 S.W. 89 (1912); *West v. Boston & M. R. R.*, 81 N.H. 522, 129 A. 768 (1925). But see *Hughes v. Chicago, R.I. & P. Ry. Co.*, 150 Iowa 232, 237, 238, 129 N.W. 956, 958 (1911): "[T]he sole inquiry . . . [to estimate plaintiff's future mental and physical suffering and loss of earning capacity] was, how long will plaintiff, in his present injured condition, live. . . . As to prospective damages, it is quite clear that plaintiff's condition at the time of trial was a material fact, and the inquiry should have been directed to his expectancy of life in his then injured con-

Although damages for lost wages thus may be awarded on the basis of the plaintiff's normal life expectancy, some American courts have restricted awards for future pain and suffering to the period the plaintiff is expected to live.²⁶ But evidence of a shortening of life expectancy may be used to show the increased extent of the injuries.²⁷ The idea expressed in the English cases that contemplation of an earlier death may result in greater pain and suffering appears to have gained no acceptance in this country.

Thus, while the British courts have awarded recovery for abbreviation of life expectancy as an independent head of damages, they have calculated damages for lost wages only for those years of life remaining to the plaintiff following the accident. On the other hand, the American courts, while denying recovery for curtailment of life expectancy as such, have computed damages for economic loss based on the plaintiff's life span unaffected by the accident.

Neither the English nor the American solution appears to be theoretically justifiable. The British courts may be correct in recognizing that there is a loss of years off the plaintiff's life which is not compensated for either by damages for economic loss or for pain and suffering. However, there has been no good explanation put forth as to why this circumstance demands compensation. It seems idle to speak of the mere deprivation of years of life entailed by the shortening of life expectancy as an element of damages. Death is of course a deprivation of any number of possible and even probable future enjoyments; yet our wrongful death statutes do not attempt to redress such a loss. Any injury involves a deprivation of a kind of good health expectancy. Any *pain* can be said to be a deprivation of a kind of comfort expectancy, or a bodily enjoyment expectancy.²⁸ A loss of some kind of expectancy is involved in any injury. To label such a loss a separate element in awarding damages is a dangerous as well as a superfluous practice. If, for example, a plaintiff has lost an arm, he is entitled to damages as compensa-

dition." McCormick, in stating the rule, states that the expectancy used for calculating the pecuniary loss should not be that at the time of the injury but rather that at the time of trial "if the injury had not occurred." McCormick, *Damages* § 86 (1935).

²⁶ *Howell v. Lansing City Electric Ry. Co.*, 136 Mich. 432, 99 N.W. 406 (1904); *Galveston, H. & S. A. R. Co. v. Miller*, 91 S.W. 375 (Tex. Civ. App., 1906); *Borough v. Minneapolis & St. L. R. Co.*, 191 Iowa 1216, 184 N.W. 320 (1921); *Richardson v. City of Spokane*, 67 Wash. 621, 122 Pac. 330 (1912), quoted with approval in *Layton v. City of Yakima*, 170 Wash. 332, 339, 16 P. 2d 449, 451 (1932).

²⁷ *Chocener v. Walters Amusement Agency, Inc.*, 269 Mass. 341, 168 N.E. 918 (1929); *Howell v. Lansing City Electric R. Co.*, 136 Mich. 432, 99 N.W. 406 (1904); *Galveston, H. & S. A. R. Co. v. Miller*, 91 S.W. 375 (Tex. Civ. App., 1906); *Magee v. City of Troy*, 48 Hun 383, 1 N.Y. Supp. 24 (3d Dep't, 1888); and cases cited note 25 supra.

²⁸ See Smith, *Psychic Interest in Continuation of One's Own Life: Legal Recognition and Protection*, 98 U. of Pa. L. Rev. 781 (1950). Professor Smith advocates increased legal protection of the psychic aspects of the human personality.

tion for impairment of earning capacity and for pain and suffering; he is not entitled, in addition, to damages for loss of *use* or *enjoyment* of the arm. Damages for pain and suffering are sufficiently vague without requiring juries to "measure . . . the immeasurable."²⁹ Moreover there is great likelihood that courts will become distrustful of this head of damages and, as the English courts have done, place an arbitrary ceiling on the amount recoverable.³⁰ This would reduce the award to little more than a formality. Contemplation of an earlier death may on occasion result in increased pain and suffering, but this injury should be compensated for under that head of damages.

If the American courts, on the other hand, are correct in rejecting loss of life expectancy as a separate item of damages, they appear inadvertently to overcompensate the plaintiff for his future economic loss. Recovery for wages lost during years which the plaintiff will not be alive ignores the simple fact which is recognized by our death and survival statutes: a dead person's maintenance involves no expense. To give a plaintiff full wage recovery is to give him (and indirectly his beneficiaries) a windfall. The plaintiff has not only been cut off from years of pleasure, but years of expense as well. This difference between a living and a dead plaintiff is readily recognized by those decisions which limit recovery for pain and suffering to those years the plaintiff will actually live.

If, however, damages for lost wages are awarded only on the basis of the plaintiff's shortened life expectancy, his beneficiaries, as has been noted, suffer a loss of support during the years cut off the plaintiff's life. In the ordinary case of loss of support resulting from a death, a death or survival action is available to the dependents. Such an action is probably not available where the death and consequent loss of support will not take place until a future date.³¹ Innovation appears necessary if this dilemma between overcompensating and undercompensating is to be solved.

One solution would allow the dependents to bring suit for lost support at the date of the injured party's expected death. This solution, however, would in all likelihood prove unworkable even where legally available. The defendant, in any action so postponed, would be sorely tempted to leave the jurisdiction. He might become bankrupt or die.³² Furthermore, insurance

²⁹ Jaffe, *Damages for Personal Injury: The Impact of Insurance*, 18 *Law & Contemp. Prob.* 219, 225 (1953).

³⁰ *Assessment of Damages in Fatal Accidents*, 100 *L.J.* 312 (1950).

³¹ There is some conflict in the authorities as to whether a death action is allowed after a judgment in an action by the injured party during his lifetime. This question is discussed at page 513 *infra*.

³² There is also the problem of the running of the statute of limitations. The statute would, in this solution of the problem, specifically need to be tolled until the estimated date of death.

companies would be reluctant to continue liability coverage of such a defendant.³³

A second alternative would be to join the beneficiaries as parties plaintiff at the time of the personal injury action, and permit them to recover from the defendant their anticipated loss of support. It is impossible, however, to determine the identity of the injured party's dependents as they will exist at the time of his expected death. This not only makes it impossible to ascertain the recipients, but also leaves the court without the base for calculating the awards. In addition, both of these proposed solutions are open to the objection that neither could be carried out without implementing legislation.

A final alternative would be to allow the plaintiff, at the time of his personal injury suit, to recover for his dependents' loss of support. This sum would be computed by subtracting estimated personal expenses from full wages. The injured plaintiff would then be awarded this amount, intended for his dependents, in addition to a full award for the period of his shortened life expectancy. To trust the plaintiff with money intended eventually for his dependents would involve no anomaly, since in the usual personal injury action where damages for lost wages are awarded the plaintiff is trusted to continue to care for his dependents. One part of the plaintiff's recovery would thus be calculated on a theory of loss to his dependents rather than to himself. This alternative has the advantage of not requiring any implementing legislation; it could be put into practice merely by means of instructions to the jury as to the method of calculating damages.

There is a real danger, however, that the introduction of an additional factor for the jury's consideration in awarding damages will result in confusion. The jury's task is, even now, a formidable one. They must estimate wages lost over future years; an award must be made for pain and suffering; frequently, provision must be made for medical expenses to be incurred during future years; and all awards for losses to be sustained in the future must be discounted to present value. To require the jury, in addition, to estimate "future personal expenses" would be to complicate greatly their task. This difficulty may be avoided in part by not formalizing the "future personal expenses" element, but by simply calling to the jury's attention the fact that the injured party will not be living over the full period for which wages will be awarded. Thus, the jury would at least be made aware that the injured plaintiff will be overcompensated if he is

³³The posting of a bond would not overcome these objections. In order to insure adequate funds being available at the time of trial, the amount of the bond would have to approximate the estimated future recovery. To tie up a large amount for a considerable period of time would be an unfair burden on the defendant.

awarded damages for personal living expenses during the years cut off his life span.³⁴

This solution would incidently have the advantage of avoiding any dispute as to rights of beneficiaries to bring a death or survival action subsequent to the death of the injured party. At present, there is conflict in the authorities as to what effect a judgment for or against, or a settlement by, the injured party has on the rights of his beneficiaries if he dies prematurely as a result of the injuries; the majority rule is that any further recovery is barred.³⁵ The danger that such recovery would result in a duplication of damages has been said to be "theoretically groundless."³⁶ If, however, damages are awarded the injured party according to the method proposed, the recovery would explicitly include damages for support lost to the dependents—the precise damages sought by dependents in a death action. In the majority of American courts, moreover, where full wage recovery is given for the period of normal life expectancy, the award to the injured plaintiff is even greater. If a death action were then allowed, double recovery would be theoretically certain.

³⁴Insofar as the solution proposes to compensate for losses caused by death, it is entrenching upon the area of existing wrongful death and survival statutes. McCormick, *Damages* §§ 94, 95 (1935). If the solution is made to synchronize with local statutes, the result will be an increasingly elaborate calculation. If, however, the solution is applied without regard to the prevailing statute, certain inconsistencies appear: First, there is frequently an arbitrary ceiling on the amount recoverable under the death acts. The amount awarded by the jury for loss of support may easily exceed the ceiling fixed by such statutes. Secondly, a difficult problem is raised by the situation where there are no dependents. To allow recovery then would conflict with the rationale of wrongful death statutes, which seek only to redress dependents. To deny recovery would conflict with survival acts, since under such statutes recovery is not measured by the loss to the dependents.

³⁵*Schlavick v. Manhattan Brewing Co.*, 103 F. Supp. 744 (N.D. Ill., 1952); *Fontheim v. Third Avenue Ry. Co.*, 12 N.Y.S. 2d 90, 257 App. Div. 147 (1st Dep't, 1939); and cases collected in 39 A.L.R. 579 and 99 A.L.R. 1091. "Whether the right of action is a transmitted right or . . . original . . . ; whether it be created by a survival statute or by a statute creating an independent right, the general consensus of opinion seems to be that the gist and foundation of the right in all cases is the wrongful act, and that for such wrongful act but one recovery should be had, and that if the deceased had received satisfaction in his lifetime . . . no further right of action existed." *Strode v. St. Louis Transit Co.*, 197 Mo. 616, 632, 95 S.W. 851, 856 (1906). But cf. the vigorous dissent, to a similar majority opinion, by Cobb, J., in *Southern Bell Tel. Co. v. Cassin*, 111 Ga. 575, 603, 36 S.E. 881, 892 (1900):

"A law authorizing a widow to recover damages from one who wrongfully takes the life of her husband . . . is nothing more or less than a legislative imposition upon a person who is the negligent cause of the death of another of a punishment for the negligent act, and the penalty inflicted is allowed to go to the person who sustained the loss by the wrongful act, as compensation for the damages done him. While such legislation is punitive so far as the defendant is concerned, it is remedial so far as the plaintiff is concerned. That the legislature in such cases may impose double damages upon a wrong-doer, seems to be unquestioned."

³⁶Prosser, *Torts* § 103 at 968 (1941).

In short, we already have a system of damages which adequately compensates both a plaintiff who is permanently injured and one who represents the beneficiaries or the estate of a decedent. The plaintiff whose life expectancy has been shortened is akin to both and should be compensated correspondingly.

SECTION 5 OF THE CLAYTON ACT—CONSENT DECREES AND THE STATUTE OF LIMITATIONS

Section 5 of the Clayton Act¹ is designed to relieve private claimants of some of the difficulty and expense of proving a violation and resultant damage under the antitrust laws. Litigants can introduce as prima facie evidence in their treble-damage actions a judgment or decree obtained in a successful government antitrust suit against the same defendant. As an added advantage, the private suitor is also allowed to wait for such a judgment since the statute of limitations will not run against his claim during the pendency of a government action.² Until recently, however, this section, and the problems it was likely to engender, lay dormant. Only a small number of treble-damage actions were brought, and few of these contained the proper elements for a test of the ambiguities in the language of Section 5. Now, with treble-damage actions based on government judgments becoming more common³—particularly suits based on the motion-picture litigation⁴—the private litigant may find that a potentially invaluable statute can mislead him.

¹ 38 Stat. 731 (1914), 15 U.S.C.A. § 16 (1951).

² The policies of allowing treble-damage actions and of suspending the statute of limitations are both the subject of current debate. In 1951, H.R. 3408 was introduced during the first session of the 82d Congress providing for a uniform six-year statute of limitations. The bill was never reported out of committee and in 1953 a similar bill, H.R. 467, was introduced. This too has not been reported. H.R. 4597, providing for compensatory damages and treble damages at the judge's discretion, was also introduced in the Eighty-third Congress and committee hearings were held on it. Hearings before Subcommittee No. 3 of the Committee on the Judiciary on H.R. 4597, 83d Cong. 1st. Sess. (1953). At present the Attorney General's Committee To Study the Antitrust Laws is conducting a study of the whole field of antitrust law with the statute of limitations and treble-damage problems on the agenda.

³ The following data show the number of private antitrust suits filed in the federal courts during the period 1942-1953: 1942, 70; 1943, 40; 1944, 50; 1945, 27; 1946, 68; 1947, 64; 1948, 78; 1949, 162; 1950, 157; 1951, 209; 1952, 261; 1953, 212. Annual Report of the Director of the Administrative Office of the United States Courts 106 (1953).

⁴ As of May 3, 1951, there were 121 treble-damage suits pending in the federal courts against motion-picture companies for a total alleged treble damage of \$339,555,925. Hearings before Subcommittee on Study of Monopoly Power of the House Committee on the Judiciary, 82d Cong. 1st. Sess. Ser. No. 1, Pt. 3, 109 (1951).