

JOINT TORT FEASORS—CONTRIBUTION—JOINT AND SEVERAL JUDGMENT AGAINST TORT FEASORS—PAYMENT OF THE WHOLE DAMAGES BY ONE OF SEVERAL TORT FEASORS.

*Palmer v. Wick & Pulteneytown Steamship Company*, (1894) A.C. 318; 6 R. Aug. 391, although an appeal from a Scotch court, is deserving of careful attention, for the comments to be found therein on the case of *Merryweather v. Nixan*, 8 T.R. 186. The facts of the case were that a stevedore and shipowners were sued for negligence resulting in the death of a workman; both were found to have been guilty of separate acts of negligence, and a verdict for £500 was rendered against them jointly, for which judgment was subsequently entered. The stevedore paid the whole amount of the damages, and took an assignment of the judgment, and then claimed contribution for one-half of the amount against the shipowners. The latter resisted the claim on the ground that being joint wrongdoers there was no right to contribution, relying on *Merryweather v. Nixan*. The House of Lords (Lords Herschell, L.C., Watson, Halsbury, and Shand) affirmed the decision of the Scotch court, that the shipowners were liable to make contribution. Both Lords Herschell and Halsbury express the opinion that, so far as English law is concerned, it is too late to question the applicability of *Merryweather v. Nixan* to all cases in England coming within the principle therein enunciated, but all of their lordships were agreed that it would not be proper to extend that principle to the jurisprudence of Scotland. Lord Herschell declares that, in his view, it is not founded on any principle of justice or equity, or even of public policy, which would justify its extension to other countries; and he also intimates that the principle it lays down, at any rate, is confined to cases where the person seeking redress must be presumed to have known that he was doing an unlawful act. Lord Halsbury, however, appears to doubt whether the rule is so limited, and is clear that the transmutation of the cause of action into a judgment would not, in England, prevent the operation of the rule laid down in that case. On the whole, the doctrine that there is no right of contribution between joint tortfeasors may be said to have received a shock.

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*Leslie v. Young*, (1894) A.C. 335; 6 R. Aug. 1, was also an appeal from a Scotch court. The action was brought to restrain