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of the persons employed by him. This article presents an agency problem, that is, master, servant, independent contractor relationship and is conditioned by the principles of agency governing this relationship.

Articles 2770 and 2772-2777 are concerned with the liens of workmen, materialmen, et cetera. These articles have largely been supplanted by statutory material and the subject is beyond the province of the present comment.⁸⁰

WALKER P. McMURDO

DAMAGES FOR PERSONAL INJURIES AND THE SHRINKING DOLLAR

—In 1878 a New York appellate court said, "the counsel for each side has cited numerous cases. But in making comparisons 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."¹

Since that time this idea has become well recognized and similar expressions have appeared in numerous cases.² The effect to be given the fluctuating value of the dollar, however, cannot be expressed in terms of a definite rule. It is only one of a large number of factors to be considered in the determination of the award, many of which can at best be merely approximated.

During and after World War I the purchasing power of the dollar declined rapidly with the consequent increase in the cost of living.³ It was during this period that the consideration of the present and relative purchasing power of the dollar by the triers of facts⁴ as a factor in the determination of awards in personal

80. This material is treated in detail in Daggett, *Louisiana Privileges and Chattel Mortgage* (1942) 217 et seq., 62 et seq.

1. *Gayle v. New York Central and H. R. R. Co.*, 13 Hun 1, 4 (N. Y. 1878).

2. The following cases are merely representative: *Doyle v. New Orleans Ry. & Light Company*, 121 La. 945, 46 So. 929, 19 L.R.A. (N.S.) 632 (1908); *Rogers v. Hiram J. Allen Lumber Co., Ltd.*, 129 La. 900, 57 So. 166, 39 L.R.A. (N.S.) 202, 15 Am. Jur. 621 (1912); *Stromer v. Dupont*, 150 So. 32 (La. App. 1933); *Brown v. Homer-Doyline Bus Lines*, 23 So. (2d) 348 (La. App. 1945); *Illinois Central R. Co. v. Johnson*, 205 Ala. 1, 87 So. 866 (1920); *Estrada v. Orwitz*, 170 P. (2d) 43 (Cal. App. 1946); *Posch v. Chicago Railways Co.*, 221 Ill. App. 241 (1921); *Johnson v. St. Paul City R. Co.*, 67 Minn. 260, 69 N.W. 900, 36 L.R.A. 586 (1897); *Hurst v. Chicago, B. & Q. R. Co.*, 280 Mo. 566, 219 S.W. 566, 10 A.L.R. 174 (1920). But cf. *Canfield v. Chicago R.I. & P. Ry.*, 142 Iowa 658, 121 N.W. 186 (1909); *Hodkinson v. Parker*, 16 N.W. (2d) 924 (S.D. 1944).

3. See table, note 22 *infra*.

4. The expression "triers of fact" is used to include either the trial judge or the jury, or both, as the case may be.

injury damage cases was first approved by appellate courts.⁵ Prior to this time the matter had been used by appellate courts only in the determination of questions of excessive or inadequate awards.⁶

In an ordinary suit for personal injury the duty of the trier of facts is to determine the quantity and quality of goods and services that he considers will fully compensate the plaintiff for the loss he has sustained. This is then converted into our medium of exchange, the dollar, at the current rate. Here the *present* rather than the *relative* purchasing power of the dollar is being used.⁷ When the loss incurred is a sum of money or an expense, neither the relative nor present purchasing power of the dollar is important since the award will be in the same medium as the loss.⁸ When, however, the attention of the trier is called to the earlier cases for use as a guide in determining the amount to be awarded, it becomes necessary to consider the relative value of the dollar at the time of the award in question and to compare that with the present purchasing power.⁹

Although the power of the courts to modify awards differs in various jurisdictions, yet so far as a review is permissible, they have adopted the practice of resorting to awards made in prior cases in order to afford some basis for comparison.¹⁰ This practice is justifiable when the awards are adjusted in the light of the changing purchasing power of the dollar.¹¹ Louisiana appellate courts in the exercise of their power to review both the law

5. *Washington & Rockville Railway Co. v. La Fourcade*, 48 App. D. C. 364 (1919); *Waiswila v. Illinois Central Railroad Co.*, 220 Ill. App. 113 (1920); *Louisville & N. R. Co. v. Scotts Administrators*, 188 Ky. 99, 221 S.W. 1066 (1920).

6. *Doyle v. New Orleans Ry. & Light Co.*, 121 La. 945, 46 So. 929, 19 L.R.A. (N.S.) 632 (1908); *Cross v. Lee Lumber Company*, 130 La. 66, 57 So. 631 (1912); *Johnson v. St. Paul City R. Co.*, 67 Minn. 260, 69 N.W. 900, 36 L.R.A. 586 (1897); *Gayle v. New York Central & H.R.R. Co.*, 13 Hun 1 (N.Y. 1878).

7. *Washington & Tockville Railway Co. v. La Fourcade*, 48 App. Cas. D. C. 364 (1919); *Hannon v. Delaware, L. & W. R. Co.*, 98 N. J. Law 191, 119 Atl. 86 (1922).

8. No case was found that expressly stated this idea, yet when the award is made in the same medium as the loss there would seem to be no necessity to consider the purchasing power of the dollar. The plaintiff's doctor bills are payable in *dollars* not purchasing power. But see: *Tennessee River Navigation Co. v. Woodward*, 18 Ala. App. 34, 88 So. 364 (1920); *Holloran v. New England Teleph. & Teleg. Co.*, 95 Vt. 273, 115 Atl. 143, 18 A.L.R. 554 (1919).

9. While no case was found directly enunciating this idea, it is submitted that the use of prior awards without the comparative use of the purchasing value of the dollar would be error.

10. *Lockwood v. Twenty-Third Street R. Co.*, 15 Daly 374, 7 N. Y. Supp. 663, 5 Am. Neg. Cas. 755 (1889); *Louisville & N.R. Co. v. Fox*, 11 Bush. 495 (Ky. 1875); *Houston & G.N.R. Co. v. Randall*, 50 Tex. 254 (1878).

11. The use of prior cases as a basis in the determination of the awards in current litigation, while not entirely reliable, does furnish some degree

and the facts and to amend or affirm judgment¹² have considered either the cost of living or the purchasing power of the dollar in order to increase,¹³ decrease,¹⁴ or affirm¹⁵ awards of the lower courts.

The decisions seem to indicate that appellate courts will consider the purchasing power of the dollar as of the time of the judgment in the trial court for the purposes of comparison.¹⁶ This is by no means a uniform practice.¹⁷ Louisiana courts, for example, have used the time of the accident,¹⁸ time of the judgment in the trial court,¹⁹ and (in effect) the time of the review upon appeal.²⁰

While available statistics on the purchasing power of the dollar and the cost of living are not entirely reliable,²¹ the use of impartial data from sources such as the National Industrial Conference Board²² and the United States Department of Labor would seem to be preferable to personal observations of the judges.²³

It is worthy to note that changing values may have an important bearing upon matters other than the quantum of damages. For example, in a workmen's compensation proceeding the

of uniformity. This uniformity serves as a basis for either litigant to determine with fair accuracy whether the award is unreasonably low or unreasonably high. It further increases the number of amicable settlements.

12. La. Const. of 1921, Art. 7, §§ 10 and 29.

13. *Cross v. Lee Lumber Co.*, 130 La. 66, 57 So. 631 (1912); *Richey v. Service Dry Cleaners*, 28 So.(2d) 284 (La. App. 1946).

14. *Bell v. First National Life Insurance Co.*, 141 So. 484 (La. App. 1932).

15. *Scott v. Claiborne Electric Cooperative*, 13 So. (2d) 524 (La. App. 1943).

16. *Rowe v. Rennick*, 112 Cal. App. 576, 297 P. 603 (1931); *Greenville v. Chicago, M. & St. Ry.*, 224 S.W. 404 (Mo. App. 1920); *Rigley v. Prior*, 233 S.W. 828 (Mo. App. 1921); *Moses v. Kansas City Pub. Service Co.*, 188 S.W. (2d) 538 (Mo. 1945); *Ward v. Cathey*, 210 S.W. 289 (Tex. Civ. App. 1919).

17. *O'Meara v. Haiden*, 204 Cal. 354, 286 Pac. 334, 60 A.L.R. 1381 (1928); *Smith v. Kansas City Southern Ry.*, 213 S.W. 481 (Mo. 1919).

18. *Hamilton v. Texas Co.*, 151 La. 692, 92 So. 301 (1922).

19. *Brown v. Homer-Doyline Bus Lines*, 23 So. (2d) 348 (La. App. 1945).

20. *Van Baast v. Thibaut Feed Mills*, 151 So. 226 (La. App. 1933). The Louisiana courts have not been clear on this point. It seems, however, from a study of the facts of the cases that Louisiana appellate courts more often consider the award in the light of the purchasing power at the time they consider the case.

21. While cost of living and purchasing power of the dollar are different in theory, no effort was made herein to distinguish them. Courts have very wisely made no distinction. The courts in dealing with personal injury damages wherein these factors may be considered can at best merely approximate the actual damages. Attempts at exactness of these factors would create further additional confusion in an already confused subject.

While the courts have made no distinctions, it would appear, in theory, that cost of living would be important only when the award was for a purpose analogous to alimony. In all other cases the purchasing power of the dollar would be considered.

existence of dependency in fact may turn upon the cost of living. In *Hamilton v. Texas Company*²⁴ the father and mother of the decedent were considered dependents within the meaning of the act although it was shown that the income of the parents was an amount which at first blush would seem ample to support them. The supreme court took cognizance of the fact that the cost of living at the time of the accident "was abnormally high, especially in an oil field" where the family lived.

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22. The information contained in the following table was secured from much more comprehensive tables on pages 276 and 277 of *The Economic Almanac, 1946-1947*, published by the National Industrial Conference Board, Inc., New York, 1946.

Cost of living of Wage Earners in the United States, 1914-1946, 1923=100.
Purchasing value of the dollar based on changes in cost of living,
1914-1946, 1923=100 cents.

(Except as otherwise shown these figures represent annual averages)

Year	Cost of Living	Purchasing Value	Year	Cost of Living	Purchasing Value
1914	63.1	163.1
(July)					
1915	61.0	163.9	1931	87.2	114.7
(July)					
1916	65.4	152.9	1932	77.9	128.4
(July)					
1917	77.6	128.9	1933	74.9	133.5
(July)					
1918	97.8	102.2	1934	79.4	125.9
(Nov.)					
1919	109.0	91.7	1935	82.2	121.7
(Nov.)					
1920	118.2	84.6	1936	84.1	118.9
1921	102.3	97.8	1937	87.8	113.9
1922	97.4	102.7	1938	85.7	116.7
1923	100.0	100.0	1939	84.5	118.3
1924	101.3	98.7	1940	85.3	117.2
1925	103.7	96.4	1941	89.0	112.4
1926	104.3	95.9	1942	97.7	102.4
1927	102.0	98.0	1943	103.1	97.0
1928	100.6	99.4	1944	104.6	95.6
1929	100.1	99.9	1945	106.3	94.1
1930	96.7	103.4	1946	108.2	92.4
			(June)		

23. In *Bell v. First National Life Insurance Co.*, 141 So. 484 (La. App. 1932) the court refused to accept statistics offered by the defendant showing that the purchasing power of the dollar had increased forty-six per cent since the decision in the case upon which the trial judge based this award. It appears, however, that the court did not deny the value of statistics but felt that the material offered (from trade journals) was probably not the most accurate and impartial available. The court took judicial notice that the purchasing power of the dollar had increased and reduced the judgment. No other case was found wherein the use of statistics on the cost of living or the purchasing power of the dollar was considered.

24. *Hamilton v. Texas Co.*, 151 La. 692, 92 So. 301 (1922). Accord: *Nineman v. Industrial Commission of Wisconsin*, 171 Wis. 190, 176 N.W. 909 (1920).