

But the difficulty of obtaining any evidence upon which such an apportionment could be based must, as a general rule, be an insuperable obstacle to a practical enforcement of this theoretical right, and in an investigation conducted on the lines supposed, it would usually be necessary to seek relief on the same principle as that which is exemplified in the familiar rule which makes two or more joint tort-feasors severally responsible for the damage arising from their acts.

That the effect of a method of inquiry based upon the decomposition of an injury into its constituent elements would be to confine both Lord Bacon's maxim and the principle with which it is identified to a much narrower field of application, will be abundantly evident if we consider from this standpoint the only problems in causation which can in practice create any embarrassment, viz., those in which, owing to the operation of some independent agency, some event to which the result complained of is partially attributable has occurred after the defendant's act. Not an uncommon view is that under these circumstances the defendant is liable or not, according as the later event was or was not one which he was bound to anticipate as a possible contingency, and upon this general theory has been engrafted the special doctrine that a subsequent act of negligence will not necessarily absolve a tort-feasor, because such an act is one which is supposed to be within the range of reasonable expectation, but that a wilful misfeasance will always sever the causal connection between his act and the injury, unless that misfeasance is one which, as a matter of fact, he intended to bring about (a), the rationale of the distinction being that the defendant is entitled to the benefit of a presumption that other persons will not be guilty of any intentional misconduct, but not to the benefit of a presumption that they will not be negligent.

Whether the curious tribute to virtue expressed by this subsidiary doctrine is justified by statistics need not now be investigated. In the present connection it is enough to point out that the main theory not only does not stand upon any logical basis, but introduces a wholly gratuitous complication

(a) Wharton on Negl., sec. 145; *Burt v. Advertiser, etc., Co.*, 154 Mass. 238.