

with a view to ascertaining whether it exhibits the phenomena of 'intention.' From the nature of the case, a similar enquiry can hardly be undertaken with a view to detecting the psychological phenomena of 'negligence.' Lawyers have, therefore, long been content, in enquiring into the alleged negligence of a given individual, to confine themselves to ascertaining whether or no his acts conform to an external standard of carefulness. Two such standards were employed by the Roman lawyers to measure that 'diligentia' the failure to attain which they called 'culpa.' . . . This abstract, or ideal, objective test" [the care which would be exercised, under the circumstances, by the average good citizen] "is that which is applied in modern codes, and is stated with growing clearness in the decisions of English and American courts." Holland's Elements of Jurisprudence(m).

"Negligence is the omission to take such care as under the circumstances it is the legal duty of a person to take. It is in no sense a positive idea, and has nothing to do with a state of mind." Clerk & Lindsell on Torts(n).

"The Roman conception of delict agrees very well with the conception that appears really to underlie the English law of tort. Liability for delict, or civil wrong in the strict sense, is the result either of wilful injury to others, or wanton disregard of what is due to them (dolus), or of a failure to observe due care and caution, which has similar though not intended or expected consequences (culpa)." Pollock's Law of Torts(o).

"Negligence is the contrary of diligence, and no one describes diligence as a state of mind. The question for judges and juries is not what a man was thinking or not thinking about, expecting or not expecting, but whether his behaviour was or was not such as we demand of a prudent man under the given circumstances." Ibid(p).

Many other authorities to the same effect might be quoted, but our purpose has been served by those already collated, and we would not weary our readers. We think it has been fairly

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(m) 9th ed. pp. 105, 106.

(n) 3rd ed., p. 431.

(o) 7th ed., (1904), pp. 17, 18.

(p) p. 429.