case has become immaterial. It is now well settled that the range of responsibility, in respect to persons, is wider where the injurious agency is a thing "dangerous in itself" or "imminently dangerous" than where it does not come under that category. For aught that appears the duty to deal with such things carefully seems like the duty to avoid creating a nuisance, to be owed to all the world. The existence of a duty, of this extent is not, at all events, negatived by any of the considerations which have been deemed fatal to the plaintiff's right of action in cases where the injurious agency was not of this character (*d*).

VIII. The most serious practical difficulty involved in the application of this doctrine is that no really adequate scientific test has ever been, or perhaps can be suggested, by which it can be determined whether an injurious agency does or does not belong to the category of things dangerous in themselves As a sober matter of fact, considered without reference to the subtleties of legal construction, it is impossible to deny that, under certain circumstances, things which are normally quite safe to persons who handle or come into proximity to them, change their character so completely as to be fraught with fully as much peril to such persons as the loaded gun in *Dixon* v. *Bell*, supra, supposing, that is to say, that the dangerous conditions are, as in that case, not apparent. Shall we say, then, that as has been declared by the New York Court of Appeals, that the distinguishing characteristic of things which are imminently dangerous in themselves, is that "se. .s injury" to any persons using them is a natural and probable consequence of such use? (*a*) The acceptance of this test would necessitate the adoption of the theory of that court in the case cited, that a defective scaffold is a thing essentially dangerous, and the same reasoning would be equally applicable to many other industrial agencies and articles of commerce. Even in New York, however, the courts have shrunk from the conclusion to which their own logic points (*b*), and such a theory enunciated would, of course,

(*d*) See *Longmeid* v. *Holliday* (1851) 5 Exch. 761, per Parke, B.; *Collis* v. *Selden* (1868) L.R. 3 C.P. 495, per Willes, J.; *Heaven* v. *Pender* (1883) 11 Q.B.D. 503, per Cotton, L.J.; *Caledonia R. Co.* v. *Mulholland* (1898) A.C. 216, per Lord Shand. See, however, the remarks of Baron Parke in *Langridge* v. *Levy* (1837) 2 M. & W. 519, referred to in X, post.

(*a*) *Devlin* v. *Smith* (1882) 89 N.Y. 470.

(*b*) *Losee* v. *Clute* (1873) 51 N.Y. 494 (steam boiler not a dangerous instrument; *Loop* v. *Litchfield* (1870) 42 N.Y. 351 (same decision as to fly-wheel which burst); *Burke* v. *De Castro* (1877) 11 Hun. 354 (same decision as to defective hoisting