

defendant's act, if that term is to be taken in its usual signification of "more likely than not to happen," and have so often required a defendant to respond in damages where the injury was not, in that sense, a "probable" consequence of his act, that it is impossible to avoid the conclusion that the rule would be presented in a much more serviceable form if the second adjective were omitted (a). The whole conception of "probable" consequences is reduced well nigh to an absurdity when we find some courts of high authority declaring that the originator of a defamatory statement is not liable for damages caused by its being repeated by other persons (b), though such repetition is a consequence which, as everyone knows, is certain to follow in ninety-nine cases out of a hundred, and other courts of equally high authority hold a defendant responsible under circumstances like those under review in *Clark v. Chambers* (c), though the average man would assuredly deem the events which led up to the final catastrophe to be very unlikely to happen.

It would seem, therefore, that, if the principle which has, for explanatory purposes, been vouched in aid of Lord Bacon's maxim is to serve as a main resource in inquiries of this sort, there is no other way of escaping the difficulties thus indicated than to resort in this case, as in the case of the maxim itself, to a very free paraphrase of the words "natural and probable," and to interpret them as meaning "not so unnatural and so unlikely to happen that, in the opinion of a reasonable fair-minded man it would be unjust to impose responsibility upon the defendant." This expedient, however, involves the rather lame and impotent conclusion that proximity of cause, when referred to the test of natural and probable consequences, ultimately depends upon the views of that most shadowy of legal abstractions, the typical

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(a) Frequent attempts have been made by judges to formulate some expression which would serve as a substitute for that which is ordinarily employed, but it cannot be said that these attempts have produced any very noteworthy results. For a collection of the alternative phrases suggested the reader is referred to a note compiled by the writer of the present article for the *American State Reports*: Vol 36, p. 809.

(b) "Damages for libel cannot be enhanced by the general probability of publication:" *Burt v. Advertisers, etc., Co.*, 154 Mass. 238 (per HOLMES, J.)

(c) L.R. 3 Q.B.D. 327.